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ABSTRACT

Under U.S. Copyright Law, there are certain circumstances in which copyrighted material can be used without permission from the copyright holder: for news reporting, criticism, research, and teaching. The existing guidelines for fair use do not, however, address issues of use arising from new developments in technology and media. This volume of proceedings is from a conference on copyright law, education-related fair use, and the new electronic media. Conference participants included copyright experts, representatives of educational institutions, and producers of copyrighted material. Keynote addresses and selected papers are included here: (1) "A New Framework for Educational Uses of Copyrighted Works" (Robert Wedgeworth); (2) "Multimedia Patent and Copyright Issues: The Need for Lawmakers to Be Multimedia Literate" (Fred T. Hofstetter); (3) "Register of Copyright Perspective" (Barbara Ringer); (4) "Department of Commerce and Patent and Trademark Office Perspective" (Bruce A. Lehman); (5) "Copyright Issues from the Perspective of an Academic Administrator" (Michael Ribaudo); (6) "Corporate Perspective" (Jon A. Baumgarten); (7) "Getting Your Music's Worth Beyond Fair Use" (Bill Mullin); (8) "Guidelines for Multimedia Productions: A Copyright Owner's View" (Bernard R. Sorkin); (9) "Association for Information Media and Equipment Perspective" (Charles Benton); (10) "Managing Intellectual Property on the Net" (Robert C. Heterick, Jr.); (11) "Use of Copyrighted Works in Multimedia: A Publisher's Perspective" (Carol A. Risher); (12) "Copyright Law: Providing Access to Information" (Charles Schneebeck); (13) "Position Statement of the Association for Educational Communications and Technology" (Hope Roland Botterbusch); (14) "Multimedia Development and Copyright Issues in the Maricopa Community Colleges" (Mary Lou Mosley); and (15) "New Media Centers Program: Forum for Research and Development of Multimedia Technologies in Education" (Kevin J. Howat). The volume also contains biographical sketches of the presenters, reports of the working committees, a summary of the open discussion on the last day of the conference, relevant sections of the 1976 U.S. Copyright Law, fair-use guidelines for books, music, and off-air videotaping, addresses of participants, and a list of suggested readings. (SWC)

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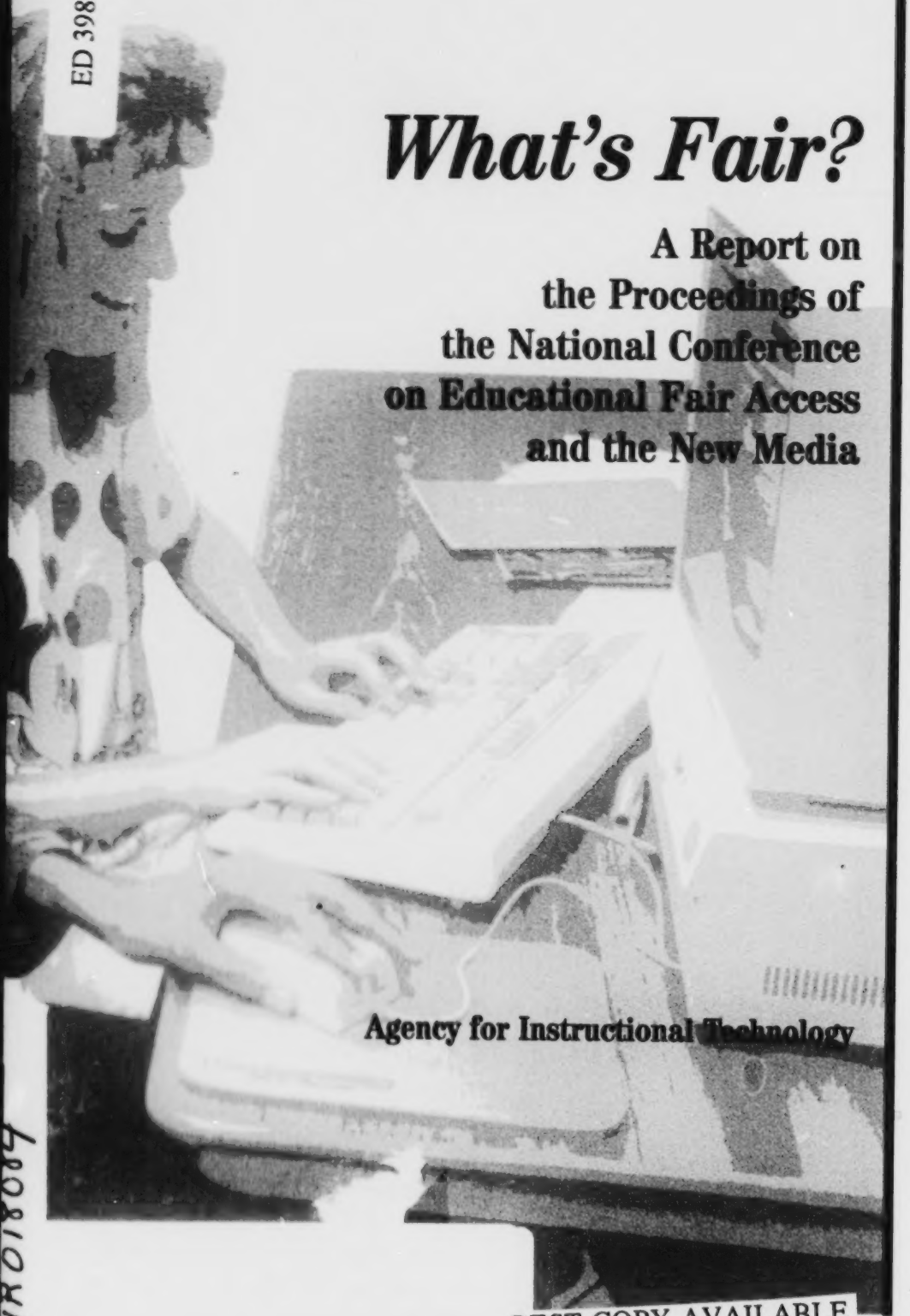
What's Fair?

A Report on the Proceedings of the National Conference on Educational Fair Access and the New Media



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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

The Educational Fair Access and the New Media National Conference took place at American University in Washington, D.C., June 15–17, 1994. It was sponsored by the Agency for Instructional Technology (AIT) and the Consortium of College and University Media Centers (CCUMC). National Video Resources and Dynacom contributed to conference funding.

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What's Fair?

A Report on the Proceedings of the National Conference on Educational Fair Access and the New Media

American University
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June 15–17, 1994

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Introduction

By Michael F. Sullivan

In a small midwestern city, a first-grade teacher sought a theme to unify her students' work, something that would engage their imaginations and interests. She found what she wanted in a favorite children's picture book, *Clifford the Big Red Dog*, by Norman Bridwell. Each year, she read the story aloud, and the children drew pictures to illustrate it. She typed the text into a classroom computer, using a program that permitted the students to interact with the words and answer questions. ("Find the word that means a color, and type it.") She recorded her reading of this story and its sequels on audiotape, so that beginning readers could practice listening to the words as their eyes followed the texts. She helped the children create a large papier-maché model of Clifford, which became the basis for activities in math and measurement. She gave out small felt cut-outs representing a big red dog to each child who read the original book, or any of the sequels, alone. The children glued or sewed these onto a bandolier, similar to ones the Boy and Girl Scouts use to display their badges. At each year's fair at the school, her class mounted a display of the Clifford pictures they had painted, and they proudly wore their Clifford badges.

Good teaching? Undoubtedly.

Violation of copyright law? Quite possibly.

A biochemist at a California university is reading proofs for a scholarly book he has written in collaboration with a colleague in a New York laboratory. Just as he is about to send the proofs back to his publisher, he reads an article, just out, that forces him to reconsider his conclusion. He quickly scans the article into his computer and uploads it for immediate sending to his New York colleague over the Internet. He also sends electronic copies to three other colleagues around the world who are familiar with his work, asking each of his correspondents to consider how his book's conclusion should be modified.

Does current copyright law require this biochemist to get permission from the author or publisher of the article before converting it to digital form and disseminating it over the Internet?

Simultaneous revolutions in education and technology are forcing a reexamination of the criteria of "fair use," embodied in the 1976 Copyright Revision Act. A "literature-based" reading program, encouraged for K–12 language arts instruction, requires providing students with a great variety of copyrighted print materials. Limited textbook and library budgets undoubtedly send many teachers to the copy machine. As students are encouraged to put together portfolios for assessment purposes, what criteria govern what they are allowed to include? Is a student violating fair-use guidelines when his study of *Raisin in the Sun* inspires him to direct the production of one scene from the play and to include a videotape of the production in his portfolio? What if the videotape

Michael F. Sullivan is Executive Director of the Agency for Instructional Technology.

is shown at a school fair? Suppose his teacher takes it to a professional conference, where she plays it as part of a presentation on portfolio assessment? Should she, or her student, have arranged for performance rights?

The concept of fair use was introduced in Title 17 of the U.S. Copyright Law, section 107, "Limitations on Exclusive Rights: Fair Use" (see appendix). The paragraph lists certain limited circumstances in which copyrighted material can be used without permission from the copyright holder, for news reporting, criticism, research, and teaching. The tests for determining fair use fall short today when questions arise from other applications made possible by new media and technological developments. The line between teaching and performance, and between education and commerce, has become very difficult to map. A teacher may hold up a book before his class to show an illustration or chart, but can the same teacher hold up the book before a television camera in order to broadcast the illustration through a closed-circuit network to a distant learning site? Does a student have the right to put together a multimedia term "paper" that combines material from a variety of sources, including text, graphics, sound, and video?

Simultaneous revolutions in education and technology are forcing a reexamination of the criteria of 'fair use,' embodied in the 1976 Copyright Revision Act.

Copyright experts, representatives of educational institutions, and producers of copyrighted material debated questions such as these at the Educational Fair Access and the New Media National Conference, convened at American University in Washington, D.C., June 15–17, 1994. The idea for the conference was born in 1992, when the Consortium of College and University Media Centers (CCUMC) recognized the potential of computer-based technology in educational settings and the need to accommodate instructors and students when they request that a copy of an excerpt be made. At the same time, CCUMC understood the concerns of copyright owners. Fact-finding meetings with copyright experts and concerned government agencies affirmed the need to clarify the issues presented and to provide a vehicle for their open discussion. Thus the mission was defined.

Other interested parties had also begun to express concern about the vagueness of current fair-use guidelines and the difficulty of applying them to educational uses of new media. The Agency for Instructional Technology (AIT), as a nonprofit producer of innovative, media-based materials for classroom use, recognizes the great need for new guidelines for the use of multimedia technologies in the information industries, especially as they are used by learners and facilitators of learning. Further, AIT holds that convention and the law in our society should allow learners to have "fair access," which the Agency defines as the right to incorporate copyrighted electronic materials into student-produced works or exhibitions of learning.

Together, CCUMC and AIT planned and sponsored the conference to foster a collaborative, working environment for representatives of the various affected interest groups. The sponsors hoped that participants would come away with a greater understanding of the issues for teachers and learners as well as for copyright holders and with a commitment to the development of new guidelines, even though there remained considerable disagreement about what revised guidelines should say.

This volume contains papers by the major presenters at the conference, who together represent the full continuum of perspectives on a difficult issue. From the attack of instructional technology director Fred Hofstetter on what he feels are unnecessarily restrictive interpretations of copyright and fair-use guidelines and his call for their thoroughgoing overhaul to Time Warner counsel Bernard Sorkin's thesis that any loosening of current copyright protection is "both unnecessary and undesirable," the essays present the spectrum of the opinions in the field.

Robert Wedgeworth, representing the situation of librarians, reviews the 1976 Copyright Revision Act, describes the strain that new multimedia uses have put on existing guidelines, and sketches out the kind of new framework that needs to be developed. Acting Register of Copyrights Barbara Ringer discusses the development of the current

fair-use guidelines and the role the U.S. Copyright Office might play in revising them. Bruce Lehman, assistant secretary of commerce and commissioner of patents and trademarks in the U.S. Department of Commerce, describes the likely actions of interest groups in shaping new fair-use guidelines and lays out the role of his office in dealing with new technologies, especially in resolving intellectual property issues in connection with the establishment of the national information infrastructure.

The tests for determining fair use fall short today when questions arise from other applications made possible by new media and technological developments.

Michael Ribaudo writes of the quandary of an academic administrator concerned with both faculty members' access to multimedia materials and their rights to materials they have developed. Jon Baumgarten relates his experience as an attorney dealing with copyright issues in an academic setting. Educational use, he says, "is not ipso facto fair use." Bill Mullin, president of a company providing music for media productions, discusses the role of music in multimedia productions and procedures for obtaining performance permissions. Speaking on behalf of producers of educational video programs, Charles Benton relates his experience with the uses and abuses of copyright law and fair-use guidelines by the educational establishment and tells of an attempt to create a commercially viable clearinghouse for licensing off-air copies. President of a large consortium of higher education institutions and associated corporations, Robert Heterick argues that a recent initiative by research libraries and universities to clarify intellectual property rights in an electronic environment deserves support, as long as there is a recognition of the very real differences between print—and the traditions of ownership that have grown up around it—and the new electronic media.

Speaking for American publishers, Carol Risher says that many of them are ready to explore new-media possibilities for the dissemination of copyrighted works and to work with educators to discuss pilot projects and experimental cooperation. Charles Schneebeck, director of computing services at a California university campus, describes two current activities and one proposal that seek to ensure fair and efficient access to information and at the same time preserve the rights of creators of works. He, like Heterick, points out that information in new, digitized formats requires policies that are quite different from those that were developed to govern print. Hope Botterbusch, representing the Association for Educational Communications and Technology, presents its position statement on fair-use guidelines. Mary Lou Mosley, associate dean of an Arizona community college, enumerates some of the promises and problems that new media and attendant copyright concerns have brought to the faculty. Finally, Kevin Howat describes a promising collaboration between software and hardware providers, publishers, multimedia developers, legal experts, governmental agencies, and educators that provides equipment, design, training, and technical advice to community and education users.

In addition to the papers presented at the conference, this publication includes reports of the working committees; a summary of the open discussion on the last day; relevant sections of the 1976 Copyright Law; fair-use guidelines for books, music, and off-air videotaping; addresses of participants; and a list of suggested readings.

We hope this collection will become a useful source of information and opinion to all those engaged in the debate about new media and fair access for education. If the lively discussion at the recent conference was any indication, it will not be easy to decide how much use the first-grade teacher can make of Clifford before she is guilty of copyright infringement. Nor is there any consensus about the actions of the university professor. Everyone involved agrees, however, that such issues must be aired and debated. Ultimately it should be possible to preserve the interests of Clifford's author and publisher, the teacher who uses him creatively, and the children whose learning depends on their fair access to him. •

Keynote Addresses

Robert Wedgeworth, university librarian at the University of Illinois at Urbana-Champaign, oversees the largest public university research library in the United States. He is the former dean of the School of Library Service at Columbia University (1985–92) and, prior to that (1972–85), executive director of the American Library Association (ALA). During his tenure, Wedgeworth transformed the ALA into a technologically advanced association with major marketing and publication programs. He was prominently involved in copyright matters during the 1970s and 1980s and served on President Ford's National Commission on New Technological Uses of Copyrighted Works (1975–78). In his more than 30 years as a librarian, library educator, and association executive, he has created and edited two major reference works, the *ALA Yearbook, 1976–1985*, and the *ALA World Encyclopedia of Library and Information Services, Second Edition*. In addition, Wedgeworth has written numerous articles on international librarianship, international book trade, copyright management, information policy, and information technology. In 1991, he was elected president of the International Federation of Library Associations and Institutions, an organization headquartered in the Netherlands that represents over 1,300 library associations and institutions in more than 135 countries.

A New Framework for Educational Uses of Copyrighted Works

By Robert Wedgeworth

Thank you for the honor of opening this important and timely conference on fair access and the new media.

It is important in that it addresses issues very much at the heart of the educational enterprise, namely the environment in which we use the existing knowledge base and add to it. The conference is timely in that almost eighteen years since the enactment of a new copyright law in the United States, there are signs of great apprehension over its application to an increasingly electronic information world.

Although estimates vary considerably as to when most of the much-heralded promise of the information superhighway and the National Information Infrastructure will appear, it is still a much different world than that which shaped the current copyright law.

There are, of course, both promises and perils predicted for the new information environment. One of my favorites is the *Chicago Tribune*'s Mike Royko's description of his experience on the Internet. He describes it like being on a highway in a blizzard with no windshield wipers and all road signs are upside down and backwards.

And, of course, there are many positive assumptions as to how potential users will behave. Several weeks ago Richard Frank, president of Walt Disney Studios, highlighted some of the insensitivity to consumer convenience by replicating a computer program for ordering pizza. Selecting the size, toppings, and method of payment took more than three minutes. He then picked up the phone and ordered a pizza in seventeen seconds.

Since the major driving forces of the new information environment anticipate consumer services and products, the educational world will need to be very aggressive in order to keep its interests visible.

Media educators have been at the front of innovation in education since the end of World War II. However, it may be useful to look at the university library as an illustrative example of factors that influence higher education. Libraries tend to reflect the dominant mode of production and use of educational information.

As early as 1962 in an exhibit at the Seattle World's Fair, the U.S. library community demonstrated its concept of the library of the 21st century. That exhibit ran from April to October in Seattle and then moved to New York City, where it ran for two similar six-month periods. The exhibit included a traditional collection of books for adults and children. However, it featured several new technologies that were not commonly known to the public at the time. There was a UNIVAC Solid State 90 computer programmed to retrieve three types of information: bibliographies of the great authors of the western world, quotations from those authors on common subjects, and gazetteer information on more than ninety countries.

Photocopying on plain paper was demonstrated in a machine designed to copy from books. Several stand-alone teaching machines, crude predecessors of today's computer-based models, were used to demonstrate repetitive instruction. Finally, we improvised to illustrate a satellite network by connecting pins in a globe with thread. As of 1962 to 1964, these were essential elements of the library of the 21st century.

Currently, a number of projects are experimenting with components of the library of the future driven primarily by changing technologies and changing economics. In 1994 we still see the continuation of collections of books, journals, manuscripts, and other materials, but in the future they may be stored in electronic formats for retrieval on demand. In addition, many more types of information sources are likely to appear for the first time in an electronic format. These specific changes recognize the increasing costs of books and journal subscriptions and the additional costs of building and maintaining physical spaces to house them. Since 1986 journal prices alone have increased by 108 percent while library budgets increased 92 percent in the same period.

These issues and their complexity point inevitably to the creation of collective copyright management systems that balance the interests of users and owners under broad-based agreements.

Information management systems for the storage, retrieval, display, and manipulation of local and remote information sources interconnect libraries from coast to coast and will continue to be developed for more and more specialized constituencies. While early computer-based information sources targeted scientific, legal, and financial communities, more recently the advent of audio and full-motion video capabilities to computing systems have encouraged the arts and humanities to develop networked information sources. Satellite communications envisioned in 1962 now connect the nation's and the world's great library collections, making them accessible to users across the world.

The more recent developments in library capabilities have been the cause for alarm among some in the author and publisher communities. The principal fear is that, as intellectual properties increasingly become accessible in electronic formats, there will be a tendency toward greater frequency of infringing activities. On the other hand, educators recognize that a huge market exists that cannot be served without more effective delivery and access mechanisms.

A recent task-force report of the Association of American Universities (AAU) presidents recognizes the enormous changes in the information environment and their copyright implications. Entitled "Intellectual Property Rights in an Electronic Environment," the report addresses the universities' interests as copyrighted materials users, creators, and publishers. Some of the concerns prompting the report include

- expanded modes of library acquisitions with restrictive contracts or licenses that erode fair use
- restrictive licenses on CD-ROM products, computer software, and on-line services
- limitations on network applications and interactive uses that enhance, alter, or create new materials for classroom use
- questions of university ownership interest in copyrighted materials created by faculty
- changing patterns of faculty transfer of copyright ownership.

The AAU recommends (1) creation of model policies that address issues of use and ownership of copyrighted materials; (2) development of a national consensus on fair use in an electronic environment; and (3) study of the feasibility of strengthening university and society-based electronic publishing outlets as means of moderating increased costs of academic information. Model policies are intended to guide practices in ways that will encourage fair use while discouraging abuses or potential infringing activities.

While the AAU focus on copyright is welcome and will raise new levels of interest within the academic community, it does not address a fundamental problem that hinders the widespread use of copyrighted multimedia materials in an electronic environment.

Several recent reports address different aspects of this barrier. Problems of inducing voluntary copyright registration are studied in the ACCORD report issued by the Library of Congress. In addition, the American Research Libraries/CAUSE/EDUCOM March 1992 report pinpoints the need for a copyright management system capable of handling the enormous growth and complexity of use stimulated by new information technologies. The report cites three points as motivating factors for supporting this recommendation: ease of access; limited skill required; and social, economic, and political issues.

The report assumes that the current copyright law is a workable legal framework but that it needs a mechanism for managing the complex technical and legal issues in the electronic domain. The report concludes that the current system for accessing copyrighted works is unmanageable. The features of the system it proposes are open access; security and accuracy for storage and transit; definitions of compensable uses; and advantages of using the system that will accrue to users, creators, brokers, and repackagers.

These issues and their complexity point inevitably to the creation of collective copyright management systems that balance the interests of users and owners under broad-based agreements. However, in all of the complex economic, social, and political issues affecting the future of copyright, we must not forget that the ultimate purpose is not just to compensate copyright owners or to encourage and support users. Ultimately, we are connecting future generations through the transmission of the culture. Perhaps this is the most important responsibility each generation exercises. •

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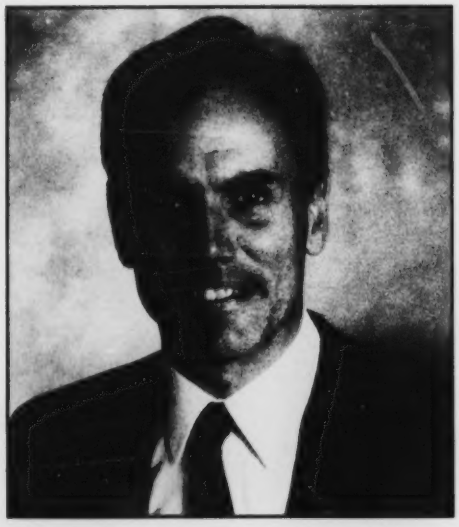

Born and raised in Columbus, Ohio, and educated at St. Joseph's College and Ohio State University, **Fred T. Hofstetter** is director of the Instructional Technology Center at the University of Delaware and a consultant for computer firms. He is a specialist in multimedia computing for music composition, desktop publishing, interactive video, digital television, compact disc, hand-held scanning, computer-based instruction, and classroom media projection. Hofstetter developed the *PODIUM* hypermedia program for DOS, Windows, and OS/2. As a full professor of music and educational technology, he authored the *GUIDO Ear-Training Lessons, Making Music on Micros, Computer Literacy for Musicians,* and *Multimedia Presentation Technology.* He has published articles in journals and magazines and has given lectures and workshops on computers and music on five continents. The winner of many grants and awards, Hofstetter is founder of the Association for Technology in Music Instruction. He is the principal investigator of the *Videodisc Music Series,* funded by the National Endowment for the Humanities, and a winner of a gold CINDY award from the Association of Visual Communicators.

Multimedia Patent and Copyright Issues: The Need for Lawmakers to Be Multimedia Literate

By Fred T. Hofstetter

"The fair use doctrine does have applicability to the products of the new technologies no matter whether groups, individuals, or copyright proprietors attempt to mislead by the publication of official-sounding documents to the contrary."—Nancy H. Marshall

Multimedia is one of the fastest-growing markets in the world today. According to the Information Workstation Group (1993), the number of multimedia personal computers will increase fivefold to 13.3 million by 1996, and the size of the multimedia production and services markets will grow more than tenfold to $30 billion by 1998. In an information society, multimedia is a strategic industry. Nations that do not succeed in multimedia will be unable to compete in the new global economy, in which citizens who cannot use multimedia computers for videoconferencing, education, just-in-time training, home shopping, and on-line financial services will become disenfranchised.

Multimedia is putting new pressures on the legal system, which has been slow to learn about new media. Embarrassing mistakes have been made in the U.S. Patent and Trademark Office, and misunderstandings about copyrights are preventing fair use in multimedia. Lawmakers and enforcers need to become multimedia literate so they can bolster the use of new media on the information superhighway instead of retarding its progress through lack of understanding.

I intend to demonstrate here how fortune seekers have tried to profit from the legal system's lack of experience by patenting basic multimedia technologies that were already widely used. I will explain how the time and energy devoted to the furor this caused would have been better spent improving existing products and inventing new ones. On a related issue, I will cite four provisos in faculty copyright guidelines that deny the teacher's right to fair use of multimedia. After demonstrating how these provisos deny fair use, I will conclude by calling upon campus copyright officials to get organized, take the lead, and revise their faculty copyright guidelines to permit these fair uses of multimedia.

Patent

Recently the Patent Office granted two multimedia patents so broad in scope that the awardees blatantly announced all other vendors owed them royalties on all past, present, and future products. This created an industry-wide protest so severe that one of the

vendors withdrew its claim, while the Patent Office overturned the other. In both cases there was prior art, meaning that other vendors had already made use of the methodologies being patented. In fact, there was so much prior art that, for people in the industry, the claims were likened to trying to patent sunlight (*Wall Street Journal*, March 25, 1994, p. B2).

Optical Data Corporation. The first case involved a patent awarded to Optical Data Corporation for the instructional methodology used in its *Windows on Science* program. Its syllabus-based curriculum outlining method is so basic to the teaching process that practically all other products already used it. Kinnaman (1993) tells how Videodiscovery filed a lawsuit seeking a declaratory judgment finding the patent invalid because of prior art and the obviousness of the claims. The Interactive Multimedia Association (IMA) supported the Videodiscovery complaint; as IMA president Philip Dodds politely stated, "Patents such as these, which require nearly every company involved in interactive multimedia and education to license an idea and application that have a long history and are widely known, are not in the best interest of the industry or educators" (Kinnaman 1993).

To stop the flow of negative publicity stemming from the patent, Optical Data Corporation dedicated the patent permanently to the public. According to Optical Data chair William Clark, "It was never our intent to use this patent to inhibit the development of multimedia-based interactive teaching methods. A tremendous amount of concern—including a lawsuit by one of our competitors—arose from this patent award. We hope that by voluntarily dedicating this patent to the public, we will end any unfounded fears that Optical Data, or any other company, might try to limit the diversity of interactive, multimedia programs available to educators" (Kinnaman 1994).

But Foremski (1994) relates that another company was attempting just that. Compton's caused an uproar by claiming at Fall Comdex 1993 that it had been awarded a patent that would require all multimedia developers to pay it royalties. As Compton's CEO Stanley Frank said, "We helped kick-start this industry. We now ask to be compensated for our investments. We will do whatever it takes to defend our patent."

Compton's. The Compton's patent is very broad. It covers any type of computer-controlled database system that allows a user to search for mixed media that includes text with graphics, sound, or animation. Compton's did not limit its claims to CD-ROM products; it also claimed rights to any type of database involving interactive TV or the information superhighway.

The title of the Compton's patent is "Multimedia search system using a plurality of entry path means which indicate interrelatedness of information." It claims a computer search system for retrieving information, comprising (1) means for storing interrelated textual information and graphical information; (2) means for interrelating said textual and graphical information; and (3) a plurality of entry path means for searching said stored interrelated textual and graphical information, said entry path means comprising:

- textual search entry path means for searching said textual information and for retrieving interrelated graphical information to said searched text
- graphics entry path means for searching said graphical information and for retrieving interrelated textual information to said searched graphical information
- selecting means for providing a menu of said plurality of entry path means for selection
- processing means for executing inquiries provided by a user in order to search said textual and graphical information through said selected entry path means
- indicating means for indicating a pathway that accesses information related in one of said entry path means to information accessible in another one of said entry path means

- accessing means for providing access to said related information in said another entry path means
- output means for receiving search results from said processing means and said related information from said accessing means and for providing said search results and received information to such user.

Compton's presented all multimedia developers with four patent royalty payment options. Kinnaman (1994) explains that Compton's included "entering into a joint venture with Compton's; distributing products through the company's *Affiliated Label Program*; licensing Compton's *SmarTrieve* technology; or paying royalties." Compton's also had the audacity to require back royalties of one percent of net receipts from sales before June 30, 1994, and three percent thereafter.

To say the least, developers reacted negatively to Compton's demands. Some suggested that users should burn all Compton's CD-ROMs and refuse to purchase future titles from any company that would try to force such a Machiavellian proviso on the multimedia industry. As a result of public hearings held by the Patent and Trademark Office to review its handling of software patents, the Compton's patent was rescinded.

Hopefully, the furor caused by the Optical Data and Compton's patents will cause the Patent Office to review such broad claims more carefully in the future. In fairness to the government, industry leaders like Optical Data and Compton's—who know better—should stop trying to profit from patenting prior art; instead, they should concentrate on improving their products and moving the industry forward.

Meanwhile, the Patent and Trademark Office has pledged to rework the software patent system. Reforms include publicizing patent applications, hiring seven software specialists as examiners, revamping the examiner bonus program so that it does not encourage superficial review, and requiring more information about patent applications before decisions are made (*Wall Street Journal*, April 11, 1994, p. B6).

Lawmakers and enforcers need to become multimedia literate so they can bolster the use of new media on the information superhighway instead of retarding its progress through lack of understanding.

Copyright

All of the audiovisual elements used in a multimedia application—including illustrations, text, movies, video clips, documentaries, music, and software—are protected by copyright. Whenever you plan to publish a multimedia work, whether on a CD-ROM, diskettes, or the information superhighway, you must make sure you have the right to use every object in it.

The National Music Publishers Association is suing CompuServe for allegedly distributing the song "Unchained Melody" without permission. The association claims that the ballad has been infringed at least 690 times by subscribers who download the song onto their multimedia PCs (*Wall Street Journal*, December 16, 1993, p. B1). The Software Publishers Association took action in 1993 against 577 organizations for pirating commercial software, resulting in $3.6 million in fines (*Atlanta Journal-Constitution*, February 3, 1994, p. C2).

Even if you do not plan to publish the material but just wish to present it, you may still be required to seek permission. For example, Wertz (1993) relates that a University of South Carolina (USC) student preparing for a juried media festival called MediaFest included a song by The Doors without obtaining copyright permission to use it. USC's attorneys ruled that the university's agreements with ASCAP, BMI, and SESAC do not cover dramatic uses of musical works or synchronization rights; moreover, they ruled that the MediaFest, which is open to the public, probably violated fair use. So the student sought permission. After a copyright search led the student to the copyright holder, it turned out to be a company that would not allow use of the song without a significant fee. As Wertz reported, "It mattered not to the company that the user was a student."

Fair Use

Fair use is covered in Section 107 of the U.S. Copyright Law; this section allows the use of copyrighted works in reporting news, conducting research, and teaching. The fair-use law is only half a page long, followed by seven pages of historical notes and twelve pages of case law decisions. The few words of the law itself follow:

Notwithstanding the provisions of Section 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

Interpreting Fair Use for Teachers. To summarize the fair-use law for teachers, one may excerpt its first paragraph as follows: "...the fair use of a copyrighted work for... teaching (including multiple copies for classroom use)...is not an infringement of copyright." The difficulty arises from interpreting the four tests, which are intentionally left vague, as the law goes on to state: "Although the courts have considered and ruled upon the fair use doctrine over and over again, no real definition of the concept has ever emerged. Indeed, since the doctrine is an equitable rule of reason, no generally applicable definition is possible, and each case raising the question must be decided on its own facts."

The vagueness of the law and the fear of lawsuits has led school administrators to publish guidelines that are much more restrictive than the spirit of the law intends. Some of these guidelines are especially detrimental to the classroom use of multimedia, and it is important for lawmakers to provide leadership in changing them.

For example, consider the following provisos in the Howard Community College Faculty Copyright Manual (problems for multimedia appear in bold print).

New Medium Proviso: An educator **may not convert** one media format into another (e.g., film to video, filmstrip to slide, etc.) without permission.

Using multimedia computers to present slides, pictures, videos, texts, and audio recordings requires that they be digitized, which changes the medium of the work. Declaring that it is not a fair use for teachers to change the medium of a work prevents their using multimedia computers to create classroom presentations and networked cooperative learning projects.

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Frequency of Use Proviso: Recorded commercial television programs may be retained for forty-five calendar days from date of recording. **After forty-five days they must be erased** or permission must be obtained for continued retention and use. Programs may be shown to a class once, **and repeated once for reinforcement**, during the first ten "teaching days" following a broadcast.

It takes a lot of time and effort to digitize a video clip. If its repeated showing in a classroom does not deprive the commercial television station of profit, which it rarely would, why require teachers to pursue the difficult permissions process or to erase their digital video clips after forty-five days? Moreover, the limit of repeating the clip only once negates one of the most important educational principles of hypermedia, which permits access to a clip as often as needed to accomplish the instructional goal. Less able students may need to view it more than twice.

Electronic Editing Proviso: Programs need not be used in their entirety but **may not be edited or electronically altered or combined**.

One of the most effective multimedia techniques is to cut, copy, and paste video clips, rearranging the material to juxtapose video sequences for teaching purposes. For example, consider the use of the Memorex commercial in the videodisc *The Puzzle of the Tacoma Narrows Bridge Collapse.* To help students understand the sympathetic vibration caused by the wind striking the bridge, a video clip of Ella Fitzgerald breaking a champagne glass by singing has been cut into the clip of the bridge collapse. Surely the fair-use law never meant to prevent teachers from creating effective teaching materials such as that.

Transmission of Audiovisual Works Proviso: Cable "transmission" of copyrighted works is limited to nondramatic literary works. Because audiovisual works are excluded from the definition of literary works, **audiovisual works may not be transmitted without a license**.

One of the most effective uses of multimedia technology is to provide students access to the material via networks that permit review and study from computer labs, dorm rooms, and homes. Is it the intent of fair use to prevent students from reviewing the material presented in class? And what about classes conducted solely over networks; are they thereby denied fair use? Since networks can deny access to users who are not registered for a course, should not networked students have the same fair use as classroom students?

Fair Use of Multimedia

By including references to photocopiers and phonograph records in the fair-use law, its authors clearly intended to permit the fair use of technology. Since the law has not been revised since 1976, it omits the personal computer revolution that has occurred since then.

Multimedia computers clearly require a fresh interpretation of fair use. It must be fair for teachers to change the medium of a work, electronically combine it with other works for didactic purposes, use it as frequently as needed for students to master the learning objective, and provide students registered in the class with access from computer labs, dorm rooms, and homes over the information superhighway. The author believes that all of these uses are within the spirit of the law and the four tests of infringement. Campus copyright officials need to take the lead and revise their faculty copyright guidelines to permit these fair uses of multimedia.

To quote Kenneth Crews, professor of business law at San Jose State University: "The objective of an institutional copyright policy should be not merely to achieve compliance with the latest standards, but also to identify maximum opportunities for the institution to lawfully pursue its informational and academic objectives. Many standard form policies, particularly the Classroom Guidelines, are questionable responses to a flexible law that should address diverse circumstances" (1992, p. 17). And in the words of American Library Association council member Nancy H. Marshall, "The fair use doctrine does have applicability to the products of the new technologies no matter whether groups, individuals, or copyright proprietors attempt to mislead by the publication of official-sounding documents to the contrary" (1992, p. 243). •

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Presentations

Barbara Ringer returned to the U.S. Copyright Office as acting register of copyrights in November 1993, having served as register from 1973 to 1980, when she retired from the office. Ringer began her career in 1949 as a GS-5 copyright examiner after earning her law degree from Columbia University's Law School. She held various posts with the Copyright Office, from head of the Renewals and Assignments Section, to assistant chief, to chief of the Examining Division. In addition, she was director of the Copyright Division of the United Nations Educational, Scientific, and Cultural Organization in Paris (1972–73). Ringer played a major role in the revision of the 1976 Copyright Law and active roles in the 1971 revisions of the Bern Convention and the Universal Copyright Convention. Beginning in 1980, she served in the law firm of Spencer & Kaye in Washington, D.C., in her specialty of copyright law. Ringer is the author of numerous studies, bibliographies, and articles in legal and professional journals and is a teacher and lecturer in her area of expertise.

Register of Copyright Perspective

By Barbara Ringer

The passing of the 1976 Copyright Law jarred thousands of librarians and educators in general into an awareness of legal realities. Their initial fears were calmed, however, when they found out that the new law did not appreciably change library operations or decision making. Accommodations had been worked out. People had reached some understanding of their mutual problems.

But the problems were different then from what they are today. The recent series of lawsuits by the Association of American Publishers, with their unsatisfactory out-of-court settlements, and the campaign to eliminate the fair-use provisions of the copyright law now have librarians practically as well as ideologically on the defensive. Librarians also fear that price discrimination by publishers may be creating a defective licensing environment. For their part, publishers look with suspicion on efforts by the Library of Congress to bring storage-and-retrieval techniques to bear on prices.

You may wonder why I left the private practice of copyright law to return to the U.S. Copyright Office after thirteen and a half years. It was the result of a crisis in the Library of Congress. Legislation had been introduced in Congress to, in effect, eliminate the main incentive to registration of copyrights—still very much a live issue in Congress and elsewhere. The Library of Congress was concerned not only about its own collection but also about the future of the Copyright Office.

Some of you may have heard of a committee called ACCORD, which is a very nice name for a very contentious committee. It was divided down the middle on whether to keep section 412 of the 1976 Copyright Law; this section is the issue of the day in certain quarters. Eventually there was an understanding among committee members. I think they came out of that exercise, as I certainly did, with a lot more understanding of the whole problem as it now exists.

What I discovered is that the whole copyright situation had changed since the time I had retired. I had tried to keep my hand in it by reading and so forth, but reading newsletters doesn't really tell you what is going on. The whole technological climate had changed. What astonished me more than anything else was that there was an enormous impasse between publishers and eleemosynary users of all sorts, copyright users such as teachers and librarians. They were not only not talking to each other; they were not even talking among themselves, and that's why I welcome this sort of conference. We need lots more of this sort of thing.

What will happen with ACCORD and the challenge to the Library of Congress and the Copyright Office remains to be seen. What we did discover was that the Copyright Office itself had to become a lot more user friendly and to encourage registration rather than to try to serve as a sort of gatekeeper for the courts. What I see as the future of the Copyright Office and the copyright system is to provide the informational infrastructure

We are operating on the premise that we are not going to change the copyright law. I think we can work out at least short-range solutions that will enable us to go forward without meddling with established law.

for a copyright management system that will make the process extremely efficient and extremely usable, something on-line and free to everybody that provides a complete, accurate, and dependable record of copyright information, including not only bibliographic information but also ownership information, licensing information, even pricing information. And we're working in that direction.

There are two initiatives that I would like to tell you about. But first I should note that we are operating on the premise that we are not going to change the copyright law. I think we can work out at least short-range solutions that will enable us to go forward without meddling with established law. You can really open a Pandora's box if you get into section 108, for example. There have been dozens of amendments to the copyright law, and it has not been improved by the process. Down the road, long after I'm gone from the scene, there will probably be another general revision of the copyright law. The last one was in 1976; the one before that was in 1909.

The first of the initiatives comes out of the Patent Office, from Bruce Lehman, my old pal from the days when we were working on revising the copyright law; he is now commissioner of patents and trademarks and assistant secretary of commerce. Bruce is not only a visionary but also a doer and shaker with respect to copyright. You may wonder why this initiative is coming out of the Patent Office, but that fact does reveal something that people are beginning to realize: that the concept of intellectual property is changing. Copyright used to be for literary property and patents were for industrial property and trademarks were somewhere in between. The portmanteau phrase now is *intellectual property*, and I am pleased with that. You can't really talk about software, for instance, solely in copyright or patent terms. You have to think of them both. The U.S. Constitution linked them in 1790, and maybe we're coming back to that point again in our history.

The Patent Office, which is swimming in money because it is fee driven, unlike the Copyright Office, is going forward with a report, a very challenging and stimulating report, that addresses the problems we are here to talk about today. It is based on hearings and a lot of study within the Patent Office. I think it deserves our careful consideration. It's called a preliminary draft of the report of the working group on intellectual property rights, and when it is released it will be distributed fairly widely. There will be hearings on it. It has administration backing, and I urge you to take careful account of it.

The report calls for amendments in the copyright law. The two that I focus on as most important involve the distribution right. The law speaks of transmission of performances and displays. What we are now concerned about is network transmissions that might be downloaded and manipulated at various places. The present law doesn't quite fit. It could be made to fit, but it probably would be better, as the report suggests, to try to make clear that the transmission right is a distribution right when it involves hard copy that you are putting on the network, visual images that are the full text of copies of works. This would be a new right that would be added to the law. It would affect teachers, scholars, librarians—the whole educational and eleemosynary community.

There are other more technical proposed amendments, but the one that you are mainly interested in is fair use. This is very controversial. What I interpret the proposal as saying is basically, let's beef up copyright; let's give copyright owners substantially more protection across the board in areas where there are big gaps, like the performance of records. At the same time, revisit the whole fair-use provision and possibly expand sections 107 and 108 to accommodate what is going on in the real world. This may be a good idea, but it will not be easy to accomplish. It will be like moving a mountain. I went through such processes during the 1976 revision, and I know exactly what I am talking about.

The other initiative comes out of the Library of Congress, which has been frustrated

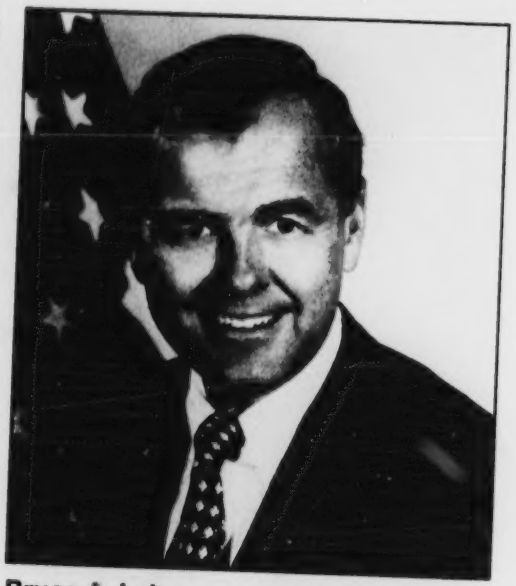
by lack of money and lack of infrastructure to go forward with it. The basic plan, as just approved, is to have a series of meetings at the Library of Congress to address problems with respect to the information superhighway, not just the intellectual property problems but also the whole technical infrastructure funding and reorganization that would be necessary in institutions like the Library of Congress. One of the main things on the agenda will be a working party on copyright in a very broad sense.

Eric Schwartz, policy planning advisor in the Copyright Office, has put forward a proposal—which the librarian of Congress has accepted—to do a test project that would be tied in with another test project we have going for electronic delivery of copyright applications. (The whole copyright process would be done electronically. We are pretty far along with that project now; I think we're actually going to start the test this year.) According to Eric's proposal, we would first define the works desired by the Library of Congress for the project, and we're thinking only of printed material, although I know that many people think we should go beyond that. We need to start small. For published, printed material, we would work out a system under which we have copyright permission and would be paying royalties for putting it on line. Then we would define the community of users, and we're now thinking seriously about confining the first test to nonprofit educational institutions, for classroom use only. We would try to determine the number of students who would participate and receive the materials, then define the intended uses. We would use dedicated lines that wouldn't be open to the public in general. Whatever you call it, performance or display or whatever, would be permitted within defined limits, a certain amount of reproduction so that the students could do what students do with such things.

We would identify the copyright owners of all the works included and try to find some kind of umbrella monitoring system. It is useless to talk in terms of one-on-one licensing. You just cannot do it. People will not use the material or will start using it clandestinely. We need an umbrella organization like ASCAP—not the clammy hand of government, not compulsory licensing, but some way that users could call up something, get permission to use it, and then pay for it without going through gyrations. This must be built into budgets. We cannot go forward into the next century trying to rely on the totally bankrupt notion of fair use to cover everything you want to do.

Finally, and this is the bottom line, we would try to negotiate a single license with appropriate representatives for a limited time, and maybe some part of the licensing fees could come back into the system to try to make it run.

I urge and implore you to be involved in this system. If you resist it—or, even worse, do not talk about it—you're going to be bounced one way or the other anyhow. We must sit down and talk together; I see this happening today, and I'm very grateful to be here to see it. •



Bruce A. Lehman is assistant secretary of commerce and commissioner of patents and trademarks in the U.S. Department of Commerce. Previously he was with the law firm of Swidler & Berlin in Washington, D.C. (1983–93). He served for nine years prior to that as counsel to the Committee on the Judiciary of the U.S. House of Representatives and chief counsel to the Subcommittee on Courts, Civil Liberties, and the Administration of Justice. Lehman served as the committee's principal legal advisor in the drafting of the 1976 Copyright Law and the 1980 Software Amendments. He has served as a member of the Advisory Committee on Intellectual Property of the U.S. Department of State and has been a member of the American delegations to diplomatic meetings and conferences in the field of intellectual property, including the diplomatic conference to revise the Paris Convention and meetings of the executive committees of the World Intellectual Property Organization and the Universal Copyright Convention. A graduate of the University of Wisconsin (1969) and its law school (1970), Lehman is a member of the bar of the District of Columbia.

Department of Commerce and Patent and Trademark Office Perspective

By Bruce A. Lehman

I'd like to start by explaining why I'm on this program. There is some confusion about my role. I am commissioner of patents and trademarks but also assistant secretary of commerce, and in the latter capacity I am an advisor on intellectual property issues to the Clinton administration. It's in this capacity that I'm here today.

Secretary of Commerce Ron Brown heads the National Information Infrastructure Task Force. That is the administration's primary mechanism for carrying out its promise to promote the rapid construction of the electronic superhighway. In keeping with our role as new Democrats, we're not going to pump a huge amount of money into big public works projects, partly because we don't have the money but also because the job is already being done, and in many ways quite well, by the private sector: fiber-optic cable, satellite distribution systems, cable systems, and so forth. So we already have or are building the main features of an electronic information infrastructure.

The real issue for the administration is whether the full benefits of this infrastructure are going to reach the American people, and sooner rather than later. Will it have minimal benefits or maximum benefits? Will it have a minor effect on the economy, or is it going to stimulate major economic growth? Will it stimulate exports? Will it put the United States in a more competitive position internationally?

The way that we make certain that the full potential of the NII, the national information infrastructure, is realized is by tuning the dials of public policy in Washington. A major part of this effort is improving and accelerating the building of the physical infrastructure. My colleague Larry Irving, who is assistant secretary for telecommunications policy in the Department of Commerce, is leading that part of the task force. He is working on bills that are already pending on Capitol Hill to try to accelerate deregulation and competition in constructing the highway.

Also in the Commerce Department, Arati Prabhakar, who is director of the National Institute of Standards and Technology, is working on the issue of applications for the highway. The federal government is the biggest user, and Prabhakar is working on trying to harmonize and standardize government applications so that they will provide a road map for everyone else. If we, who use the NII in government, come up with standards, that will make it easier for all the disparate elements of the private sector to work together.

We also have an Information Policy Committee headed by Sally Katzen, deputy director of the Office of Management and Budget. It has three parts. One part is concerned with privacy and security, an important area in these days of electronic data. Another is examining how we will treat government information. Work produced by the government is not copyrightable, mainly because we want to make it widely available to the public.

The committee is busy finding out how the information infrastructure can make it even more accessible to the public.

The third part of the information committee is the intellectual property rights working group, which I have been assigned to chair. It consists of people from just about all the federal agencies. Since last fall we have been attempting to define the intellectual property issues and to come up with a series of recommendations. Our opening shot was a series of public hearings where about 60 witnesses testified. We have also brought in experts and consultants from time to time and talked with them.

The overall NII Task Force, by the way, consists entirely of executive branch officials. Our advisory council, however, consists of about 30 nongovernmental officials from both the not-for-profit and the profit-making sectors. The co-chairs are Ed McCracken, president of Silicon Graphics, and Delano Lewis, chief executive of National Public Radio. The committee's role is to look at what we're doing and represent the community that is concerned with this project.

We are now reaching a critical point. We are about to release our preliminary report. There is a good reason why we call it preliminary. We want to get feedback from as many people as possible; the information infrastructure is too important to let it be dominated by special interests. When our report is released we will seek comments that will be on the Internet. Those who wish may download the report or access it from the Internet, and we will accept comments in writing from the Internet. Those comments will be available for public inspection in our office. We will have public hearings in addition so that people can come and explain their views. Eventually we will issue a final report. Only then will we make serious recommendations for changes in statutory law.

I'd like to say a few words about the philosophy of this emerging report. Fortunately we have some successful examples in history to look at. The whole evolution of the 1976 Copyright Law, which many of us worked on, and the things that happened subsequently, the amendments—all of that gives us a good history. I think basically the Copyright Law has worked very well in an era of changing technologies over the past twenty years. We don't want to completely rewrite the whole law. We would be working for the next hundred years. It took twenty years to do the 1976 law.

The place to start is to decide how the existing law is going to cover the information infrastructure, then write an analysis that will serve as a guidepost for people wanting to use the infrastructure. We have precedent for that. The Commission on New Technological Uses (CONTU) of copyrighted works that was set up in the 1970s issued a report in 1978 that ultimately became the legislation on computer software copyright in 1980. Now the computer software copyright amendments were probably about five sentences long—very modest amendments to the law. But those statutory changes built on a scholarly and extensive analysis of how the existing law of copyright should apply to the new age of computer software. And so the CONTU report provides a basis for people to work on, and it has worked quite well. The proof is that even though there is a lot of anxiety in this field and people are talking about litigation, there is more litigation in real estate in one year in Washington, D.C., than there is in the area of copyright, and certainly computer software copyright, in the whole United States. That is proof of the efficacy of these processes that we evolved over the past twenty years.

Some fairly modest statutory changes may be recommended in the preliminary report. But by and large the report will be an explanation of how the existing copyright law will function in the context of the digitized world of the information superhighway. This question not only has important domestic implications but also is critical to world commerce in intellectual property, to freedom of information and exchange of information on a global basis. I hope it will be the basis for an emerging global understanding of how the intellectual property law will work.

I know that the present group has a particular interest in fair access and fair use. And I know that those attending this conference include people in the academic and library communities and people in the proprietary publishing community. One thing we realized early on when we got into our analysis of how the existing law would work is the very fine work that was done in the 1970s to provide a statutory foundation for the previously existing traditional doctrine of fair use and then to flesh that out with guidelines and understandings that an elementary school teacher could apply. That work was going to come under considerable strain in the digital superhighway context and those guidelines simply would not apply. Guidelines on photocopying don't have any relevance to the downloading of a copyrighted work by a PC in an elementary school and the use of that work in the elementary school, if one wants to make copies or use it in various ways and share it within that environment. We don't have guidelines on that right now. If people are to feel secure in using the information superhighway and if proprietors of copyrighted information are to feel secure in putting their vehicles onto the highway, they must have some sense that products won't be stolen. And the users need assurance that they won't be sued if they use the superhighway.

This gets back to the point I made about the superhighway benefits coming sooner rather than later. If we do not move quickly to define the scope of fair use in this area, there will be a chilling effect. Publishers will be unlikely to want to use the superhighway to distribute their products, and users will be afraid to use it because of the legal liability. Those who work for school systems know that one of the most flourishing areas of law these days is advising school boards on potential liabilities. So it is important to have a new round of discussions about the scope of fair use in the digital context.

If we do not move quickly to define the scope of fair use in this area, there will be a chilling effect. Publishers will be unlikely to want to use the superhighway to distribute their products, and users will be afraid to use it because of the legal liability.

One of the things we will be doing as a working group of the National Information Infrastructure Task Force is convening a conference at which we will attempt to determine what the issues are and how to come up with a common understanding of what the scope of fair use is in the digital environment. For example, in the existing guidelines, we have section 108 for library photocopying, but we have a separate section 107 for educational fair use. I don't imagine at this point that there will be any statutory changes in section 107. I think 107 probably can work well in the digital context, but we do need to understand how it applies. This is the kind of issue we will be looking at in this conference.

As for our report, we encourage everyone to read it carefully and to give us their reactions. We in the administration are concerned about improving access for all of our citizens to all of the benefits of our society. We have not forgotten our responsibility to make certain that the nation's resources are available fairly to everybody, and one of the hallmarks of the national information infrastructure project is to attempt to ensure wide access.

I'd also like to say a word about the copyright management system at the Library of Congress, which Barbara Ringer also spoke about and which is discussed in our report. It is a perfect example of the tremendous central role that the Library of Congress can play in the national information infrastructure, to provide a standardized mechanism for keeping control of copyrights so that they can work in the digitized system. We applaud that work.

You may recall that the Clinton campaign in 1992 was summed up in the phrase "It's the economy, stupid." Someone has now coined a phrase in the context of the national information infrastructure: "It's the content, stupid." That's what we're all concerned about: the content and the rules of the road for the content in the NII. I look forward to working with all of you in the coming months so that our nation will continue to occupy a leadership position on the emerging superhighway. •

Michael Ribaudo is university dean for instructional technology and government and industry partnerships at City University of New York (CUNY). He is responsible for coordinating the research and instructional computing activities at the 21 unit colleges of the CUNY system. Prior to assuming his current role in 1985, he was an associate dean for academic affairs at CUNY charged with coordinating a systemwide testing program and directing research on the effectiveness of the university's basic-skills instructional efforts. Ribaudo is a founder and former director of the New York State Education and Research Network, the regional high-speed telecommunications network linked to NSFnet. He also served on the executive committee of the Apple University Consortium and has consulted widely with vendors and universities on the uses of computers in the classroom. A director of the National Testing Network in Writing, he recently completed the direction of a major project to assess the effectiveness of the use of computers in college-level writing programs.

Copyright Issues from the Perspective of an Academic Administrator

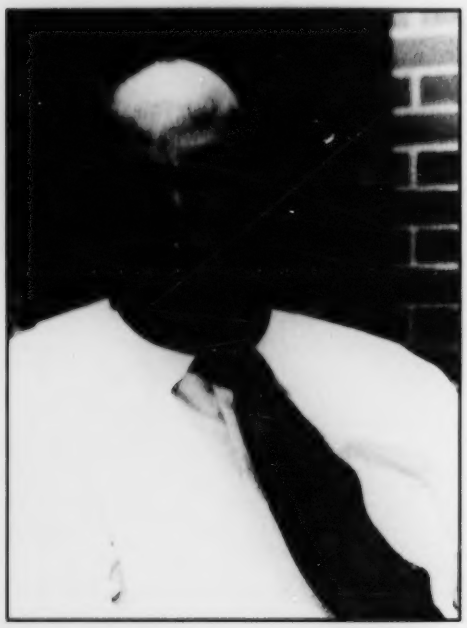
By Michael Ribaudo

Issues of copyright pose an almost schizophrenic dilemma for those of us involved in academic administration in higher education. We know that exposure to multimedia-based course materials can be tremendously beneficial to the learning process. On the other hand, we find ourselves supporting individual faculty members and faculty development teams with released time, equipment, and programming support. We expect a return on our investment that will yield multimedia applications rich in primary and secondary source materials from which our students can profit significantly. And while we would hope for an ideal world where our faculty authors could operate without the restrictions imposed by intellectual property concerns, we recognize the legitimacy of the claims of copyright holders who expect to see their rights of ownership honored.

As administrators, we often feel like laymen, neither conversant in the intricacies of copyright law nor as experienced as authors with the frustrations of navigating the system. We are told of the barriers that copyright regulations present to the creation and dissemination of media-rich instructional software. We are barraged by the accounts of individual faculty members and by what we read in the press to such an extent that at times we have difficulty knowing which end is up.

And, if anything, advances in technology and the dramatic growth of media-rich materials now sitting on file servers and widely available over the Internet make the situation even more confusing. From my desktop machine today, using Internet navigation tools such as Mosaic, I can browse through hundreds of virtual museums all over the world and call up to my display high-resolution images—of paintings, photographs, movie clips, animations. In most cases, the servers on which these digital data reside contain no caveats or cautions regarding ownership or what I can do or should not be doing with these files if I choose to have them forwarded to me. In the area of World Wide Web servers alone, it seems that hundreds of new resources are announced each month, and more and more colleges and universities are deploying the networks and workstations that are making access by faculty to these resources more and more ubiquitous.

Media consumers need to work hand in hand with media owners to grapple with these issues and to look toward advancing technologies not as the source of new problems in the area of intellectual property concerns but rather as a means to new solutions. •



A partner in the law firm Proskauer, Rose, Goetz, and Mendelsohn in its Washington, D.C., office, **Jon A. Baumgarten** is a graduate of the New York University School of Law and a member of the bar since 1968. He is a former general counsel of the U.S. Copyright Office (1976–79), where he was instrumental in the formulation of the 1976 Copyright Law and was responsible for the preparation of Copyright Office regulations and practices under the new law. Baumgarten is the author of *U.S.—U.S.S.R. Copyright Relations Under the Universal Copyright Convention* and is a member of the National Advisory Committee to the U.S. Copyright Office and the International Copyright Panel of the Advisory Committee to the Department of State on International Intellectual Property. Presently his practice emphasizes domestic and international copyright, trademark, licensing, contract, litigation, and related matters pertaining to the publishing, computer, motion picture, music and recording, communications, and arts communities.

Corporate Perspective

By Jon A. Baumgarten

I was pleased to be invited to participate in this conference, which I think will illuminate important developments and concerns in law, technology, and education. It's interesting to be following Dean Michael Ribaudo of the City University of New York, since I did my undergraduate work at what was then City College of New York. (But I obtained my law degree from New York University [NYU], and, when my clients found NYU photocopying, that didn't stop me from taking the appropriate legal action.)

I must immediately make a disclosure that I hope will not unduly disappoint the organizers of and participants in this conference. Though I am and have long been copyright counsel to the Association of American Publishers, I am not here as a formal representative of the AAP; nor do I have any authority whatsoever to negotiate or agree to specific guidelines on behalf of the association or its members. You're most fortunate today to have with you Carol Risher, the vice president for copyright and new technology for the association. I think that I speak for both Carol and myself when I say that our purpose here is principally to learn about the use of technology in an educational context, to participate in discussions about these developments, and to share publishers' concerns. We're just beginning to understand what the new role of publishers, the new role of librarians, and the new role of educators is in this exciting, emerging environment.

Having made this disclosure, let me share with you a few of my personal general observations about fair use. First, in my view—and, I suggest, in the view of the United States Supreme Court, the appellate courts, and trial courts as well as the Congress—the doctrine of fair use is a limited, albeit very important, defense to copyright infringement. It is not, as some commentators would have it, a broad-based fundamental right of unauthorized use or a pillar of users' rights on a par with the exclusive rights accorded to copyright owners under the copyright laws.

Second, a related concept: although the application of fair use can and undoubtedly will be affected by developments in technology, it remains a limited privilege for occasional and essential supplemental activity. The doctrine is not and should not be a basis for regularized or systematic exploitation of others' property without permission. I recall during the case I mentioned earlier against NYU the great public anguish expressed by educators that we were pursuing such a case. Nonetheless, a lot of educators came to us privately and applauded the bringing of the lawsuit. And when we began to think about it, we realized that the condemnation was coming mainly from undergraduate faculty members and that the praise was coming more quietly but equally powerfully from graduate faculty. A large part of the difference, we realized and had confirmed to us, was that graduate faculty members, who wrote the books, were seeing their royalties disappear as their undergraduate colleagues picked bits and pieces from their books and put them in homemade, unauthorized anthologies, leaving their books to go out of print.

Authorization for the use of other people's property, as Luddite as it may seem to some, is still a matter of fundamental importance to publishers, authors, and to the societal interest in the creation of quality educational materials.

Authorization for the use of other people's property, as Luddite as it may seem to some, is still a matter of fundamental importance to publishers, authors, and to the societal interest in the creation of quality educational materials.

Third, I think it is clear that educators, school administrators, and publishers share the objective that Commissioner Lehman mentioned, and that Barbara Ringer and Bob Wedgeworth reflected as well, of a common commitment to the importance of educating schoolchildren and students at all levels of achievement in this country. Having a thriving educational environment is a national imperative. And the fair-use doctrine undoubtedly has a role here, though its parameters are yet to be determined. But just as publishers must and will come to understand the legitimate needs of educators in the technological age, educators must understand that educational use is not ipso facto fair use. Court decisions have restated and emphasized this point, not just in recent cases but as long ago as the early 1900s, long before photocopying was thought of.

Educational needs in this country have been and will continue to be served by a dedicated, risk-taking, and profit-seeking private publishing community willing to invest its resources, time, effort, and money in creating, developing, and disseminating educational materials. As new technologies change the nature of the educational marketplace, publishers will seek new ways of serving these needs with innovative materials designed to capture the attention and the imagination of students and to enable educators to work their skills and their incomparable magic in the classroom. Education and publishing form a cooperative, not an antithetical, environment. The usurpation of this market through an unbridled rush to capitalize on the promise of technology without regard for the interests of those—authors and publishers—who make possible the works that the technology uses will in the end be counterproductive and will destroy the cooperative environment.

If this conference is a first step taken in a cooperative spirit, to be complemented shortly by other steps forward, then it is certainly worthwhile. But if this conference and others like it are simply additional steps in pressing the notion that technology is wonderful, we must use it, and everything else be cast aside, then I suggest that not much is going to be accomplished. I hope the first picture that I portrayed is the one that develops, and I look forward to participating with you. Thank you. •

Bill Mullin is president of Signature Music, Inc., a worldwide publisher and producer of music for media, located in Buchanan, Michigan. Signature has been serving the broadcast, industrial, and educational markets for ten years with the Signature Music Library, containing a wide range of song styles. Applications where songs have been licensed range from motion pictures, such as Warner Brothers' *Pelican Brief*, to local school media centers, such as that in De Kalb County, Georgia. Mullin graduated from Ball State University with a degree in telecommunications. He has worked in radio and television production; has owned and operated a recording studio; has sold, designed, and installed professional audio equipment; and has managed the marketing of microphones for Electro-Voice.

Getting Your Music's Worth Beyond Fair Use

By Bill Mullin

Feelings are often remembered long after intellectual details have faded. In the words of Thomas Fuller, "Seeing is believing, feeling's the truth." Educational media programs, while designed to convey the range from concrete information to abstract concepts, are not wholly effective as strictly factual presentations. The more compelling and engaging programs are emotional in content to some degree, even when conveying clear-cut information. Students' developed affinities toward a topic can have a great deal to do with what they retain about it. The feeling people have about learning a subject has a lot to do with how they integrate it into their collective and sometimes tacit understanding of it. One of the most effective tools for creating an appropriate feeling in your message is music.

Music's Role in Media Productions

Music can play a number of roles in your script. It can attract attention. It can set up, emphasize, or punctuate points of interest. It can create tension and release for problem/solution deliveries. Are you attempting some finality, or do you want to suggest that there's more to come? Sometimes music is simply a bridge from one topic to another. It acts as a nice buffer between statements. In this respect, it's the equivalent of "white space" in print. The audience can relax, breathe, and prepare for more.

There are times when no music at all is best. This "effective silence" technique can act as a point of punctuation or lend gravity to a point, cueing the listener to give serious attention.

How to Find Appropriate Music

There are educational situations where a fair use of copyright material may be valid. However, there are other cases where the program may be considered as enhancing the academic worth of the school or instructor and so gaining a "commercial advantage."

So, where do you find music that complements the environment you're creating? With sufficient time and budget, you can have original music scored. With this option, you may be licensing the use of a composed piece (on an exclusive or nonexclusive basis) or you may create a "work-for-hire" agreement, where you own the song upon payment. These terms should be clearly established with the music provider.

You can also opt for tracking down the licensing of a popular song. This process may involve several levels of permissions to use. The record label, which owns the recording, and the composer and publisher, who own the composition, need to approve the use. If you can only get the license for the song, or the recording use is expensive, you may want to record your own version.

When original or popular music is not required to be your theme, or the process is too cumbersome and expensive, your best resource is a production music library. There is a wealth of preproduced stock music of every kind on compact disc, designed specifically for media production, at very reasonable rates. Best of all, long past are the days of the canned, postwar, newsreel/documentary sound that once was available on vinyl records. The difference between the quality of production music and the output of a major record label is virtually nonexistent.

There are many advantages of using a production music library:

- The library includes good music recordings and quality performances that are not otherwise available.
- Library compositions are designed for media use and blend well with narration.
- The music is less expensive than original or licensed pop music.
- It's relatively easy to get clearance from one source.
- Library music is available for immediate use.

Music at Work

Your audience today, whether in the classroom or across a satellite network, is sophisticated about media. The viewer will accept a diversity of styles and moods that work with the message. This cultural mingling is present everywhere, from motion pictures to local advertising. The styles of symphonic orchestration coexist with cutting-edge rock, and the textural effects of new age or world-beat music are often superimposed on music that is eclectic, electric, acoustic, and even opera. General acceptance of this mixture allows a lot of liberty in this global village and provides a broad palette of choices as we move from project to project or from scene to scene within a project.

How does music work with your message? The obvious consideration is tempo and rhythm. Your audience will readily identify with the pace of a piece, as their heartbeats respond to its rhythm. The level of activity is important, too. Do you want to imply busyness or sparseness? What style appeals to your audience's lifestyle? Styles can invoke geographic images, time periods, or states of being such as action or reflection. Some copywriters report that they often select the appropriate music first and then use it as a source of inspiration for the copy.

When original or popular music is not required to be your theme, or the process is too cumbersome and expensive, your best resource is a production music library.

Copyright Awareness

It is essential to be aware of how music, an intellectual property, is acquired. There are basically three rights to be concerned with when using music. One is the *synchronization right*. This gives you permission to apply the music to visuals or spoken word. The *mechanical right* gives you permission to reproduce copies. These two rights are granted by the music library. The *performance right* provides permission for public performances of the music in your production. ASCAP and BMI are organizations governing performance rights to which most composers assign clearance and fee-collection duties. It is often best for the instructional media presentation to secure the performance rights directly from the music library, too. Doing so eliminates the concern for ASCAP/BMI clearances. Music libraries will cooperate for most forums that are not wide-broadcast exposures, such as radio and television.

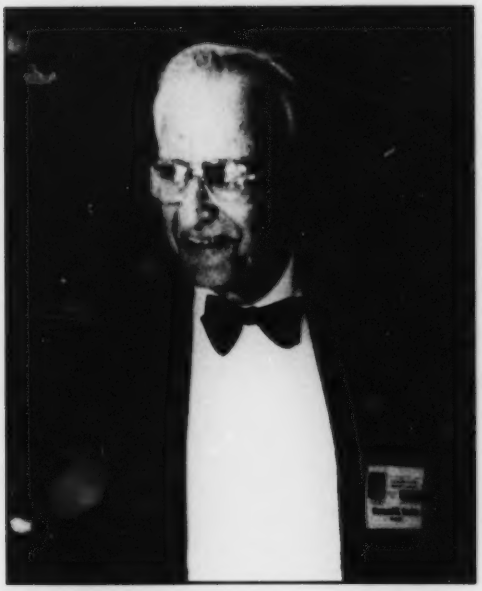
Licensing Options

Libraries usually offer at least one of three basic licenses or purchase options for the synchronization and mechanical rights. The "per-use" license may be the oldest established type. With this, you can obtain a set of discs, usually by paying a nominal access fee to have them on hand, and remit a license payment when you use particular songs

found on the CDs. This option has traditionally been called "needle-drop." Costs vary from $25 to $75 per song for each application. The advantage of a per-use approach is that you have about the lowest initial outlay and only pay for what you use.

If you are using a large quantity of music, an "annual blanket" or "lifetime license" may be your best choice. The annual plan gives you a quantity of music with rights to apply any of it to unlimited productions within a year. The library asks that you log what you use, reporting it at a certain time. Depending on the amount of music you get, an annual fee can run from $800 to $5,000.

The lifetime license (sometimes called a *buy-out*) is long term. You pay one time for use of a set of music. •



Bernard R. Sorkin is senior counsel for Time Warner, Inc., in New York City, where he has served as attorney since 1964. Previously he was attorney for Columbia Pictures Corporation (1952–64). Sorkin earned his bachelor's degree in 1944 from City College of New York, his juris doctor in 1948 from Columbia University Law School, and his master of laws degree in 1952 from Brooklyn Law School. He is a member of the Librarian of Congress Advisory Committee on Registration and Deposit.

Guidelines for Multimedia Productions: A Copyright Owner's View

By Bernard R. Sorkin

It is my thesis that it is both unnecessary and undesirable to loosen the provisions for copyright protection so that faculty and students may use copyrighted material to produce multimedia productions for use in classrooms. So that my position is clear and not attacked as what—many years ago in law school—was identified to me as a "negative pregnant," may I say that, in my view, it is both unnecessary and undesirable to loosen copyright protection under any circumstances.

Copyright has always been subject to decisional and statutorily imposed limitations. Although the only limitation set forth in Clause 8 of Section 8 of Article I of the U.S. Constitution is that the exclusive right shall be secured for "limited times," courts very early imposed the further limitation of the fair use doctrine in order to accommodate society's need to use and benefit from an author's creation.

The fair-use doctrine, recognized by many courts as one of the most complex and difficult aspects of copyright law, has well served the needs of criticism, comment, news reporting, teaching, scholarship, and research, to use the words of the statute in which the doctrine was for the first time codified as Section 107 of the 1976 Copyright Law. During the gestation period of that legislation, the education community sought expansion of its right to use copyrighted material. The report of the Committee on the Judiciary of the House of Representatives in dealing with Section 107 pointed out that "although the works and uses to which the doctrine of fair use is applicable are as broad as the copyright law itself, most of the discussion of Section 107 has centered around questions of classroom reproduction, particularly photocopying."

Section 110 of the Copyright Law provides that copyrighted works may be performed or displayed "by instructors or pupils in the course of face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction." According to the House report, the phrase *in the course of face-to-face teaching activities* is intended to exclude broadcasting or other transmissions from an outside location into the classroom, whether radio or television and whether open or closed circuit. The House report further makes it clear that "nothing in this provision is intended to sanction the unauthorized reproduction of copies or phonorecords for the purpose of classroom performance or display."

In 1976 representatives of the ad hoc Committee of Educational Institutions and Organization on Copyright Law Revision, of the Author's League of America, and of the Association of American Publishers agreed on guidelines for permissible copying for educational purpose from books and periodicals. A little later, representatives of the National Music Publishers Association, the Music Teachers National Association, the

Music Educators National Conference, the National Association of Schools of Music, and the ad hoc Committee on Copyright Law Revision advised that they had agreed on guidelines for the use of copies of musical works.

What remained as a difficult problem to resolve was the question of off-the-air taping of copyrighted audiovisual works incorporated in radio and television broadcast. A negotiating committee composed of broadcasters, educators, copyright owners, and creative guilds and unions was appointed by Representative Robert Kastenmeier, chairman of the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice. After two years of work, guidelines were agreed to, submitted to the subcommittee, and published in the *Congressional Record* of October 14, 1981. Among the members of the negotiating committee were representatives of the Motion Picture Association of America (MPAA) and the Association of Media Producers (AMP). The former is a trade association made up of a number of motion picture producing and distributing companies and the latter represents producers and distributors of educational media materials. The MPAA took no position with respect to the guidelines but did advise that seven of its members agreed to them; the AMP voted not to endorse the guidelines.

Section 110 and the guidelines bespeak a point of view that has grown and is growing, to the effect that copyright should be drastically limited by perceived public interest. Recent technological advances have stimulated this point of view.

The development of digitization is making it possible for copyrighted works to be reproduced, modified, transmitted, and distributed in ways not previously contemplated and with an ease not previously imagined. Ralph Oman, until recently our register of copyrights, described the development very well when he said, "Every plugged-in consumer is a potential author, a potential publisher, and a potential infringer—all at once or at different times. Everyone will have the capacity to manufacture copies of works of perfect quality."

What that possibility inspired in some is not concern for copyright protection but rather inspiration to seek a loosening of protection. As is very frequently the case, Shakespeare put it best: "How oft the sight of means to do ill deeds make ill deeds done" (*King John*, Act II).

For example, Robert L. Oakley, director of the Law Library at the Georgetown University Law Center, testified last November before a working group on intellectual property of the National Information Infrastructure Task Force on behalf of a number of libraries and educational associations. Professor Oakley made the point, among others, that "the rights of copyright owners should be broad enough to ensure a fair return on their work, but limited in the public interest so as not to inhibit the use of existing works, especially for research, education, and the creation of new knowledge." This is not totally apple pie and motherhood. Once we start to think in terms of limiting a copyright owner to a "fair return" on his, her, or its work, the well-known slippery slope will get very crowded indeed. Professor Oakley, in fact, went further and proposed that "any system must accommodate the distribution of some works at no cost to the individual user."

There are a number of reasons why it is not only unfair but also socially and economically undesirable to further diminish copyright protection as an aid to education.

At that same hearing, Dennis Bybee, associate executive officer of the International Society for Technology in Education, went even further. Speaking of the intellectual property rights of creators, he said, "We want, for example, users to have unrestricted access to information. We want them to not be inhibited in any way by protective devices or by rules or other restrictions." The "protective devices" to which Mr. Bybee referred are, I think it is fair to assume, technological methods such as encryption of audiovisual programming and other means to prevent or at least deter unauthorized copying. As to the "other restrictions" that Mr. Bybee wants to avoid in order not to "inhibit" users, I can only suppose that he means the entire copyright law.

Protection of copyright is important to our society—at least as important as protection of tangible property.

Equally specific was Frank Connolly, associate professor of information systems at American University. He said, "In print context, fair use makes limited resources available without permission under specific conditions. The spirit of fair use needs to be extended to and promulgated in the NII [National Information Infrastructure]. Materials for teaching and learning that would otherwise be protected and controlled must be readily and freely available for nonprofit educational purposes without the need for time-consuming procedures to identify rights holders, request permission to use the material, and then negotiate an agreement that requires review by administrative and legal staffs of one's institution." Dr. Connolly went on to say that "protecting the financial interests of creators and distributors at the expense of teachers and learners will broaden the chasm between have and have-not colleges and schools" and that "an electronic fair-use policy should make resources readily available for nonprofit educational purposes."

The latter statements seem to remove any lingering hope that Dr. Connolly's concern was with the time and effort involved in obtaining permission to use copyrighted works and not with having to pay for such use, and it would appear that in Dr. Connolly's view, copyright owners should shoulder the burden of narrowing—or, at least, not broadening—the "chasm between have and have-not colleges and schools." In my view, this very significant problem is a matter for tax and funding reform and should not be put at the door of creators of copyrighted works.

There are a number of reasons why it is not only unfair but also socially and economically undesirable to further diminish copyright protection as an aid to education. Faithful adherence to basic principles of copyright protection has helped this country become the largest creator, user, and exporter of intellectual property in the world.

The economic importance of America's copyright industries is illustrated by some recent statistics. In 1991, the copyright industries accounted for $325 billion in revenues or about 5.6 percent of gross domestic product. Copyright industry employment stood at 4.8 percent of all employment, 5.5 million people. These industries employed new workers at a greater rate—3 percent between 1977 and 1991—than any other comparably sized sector of the U.S. economy. They employed new workers at a rate more than three times that of the remainder of the U.S. economy as a whole, 3 percent versus 0.97 percent. The copyright industries delivered over $36 billion in foreign sales to this country in 1991, and data for 1992 indicate growth of 9 percent to $39.5 billion, an achievement exceeded only by the aerospace and agriculture industries. So far as the motion picture industry is concerned, anyone who has been within earshot of Jack Valenti knows that the industry contributes over $4 billion in positive balance of trade annually.

The copyright industries and the motion picture industry in particular are an economic and social treasure which should be tampered with only under the most exigent circumstances. Specifically, exceptions to the exclusive rights enumerated in Section 106 of the Copyright Law should be considered only in the light of clear and convincing evidence that the marketplace cannot adapt under the existing statute to maximize the long-term interest of creators and users of copyright. More specifically, the fair-use provisions of existing law accommodate legitimate user interests and need not be further expanded to deal with multimedia production and use in the classroom.

This is not to say that the economic importance of copyright provides the only, or even the most important, reason for avoiding a weakening of copyright protection. It is not the economic importance of copyright that provides the rationale for the Copyright Law's provision of statutory damages. That is to say, the Copyright Law allows a copyright owner to obtain a judgment against an infringer in an amount determined by the court within monetary limits established by Congress, even though the copyright owner does not prove that he or she has been damaged. It is not usual for our law to provide for a

monetary award to one who does not establish both the fact of damage and the amount of damages. The Copyright Law does just that where infringement is established by recognizing that there is an important value to be protected and vindicated quite apart from monetary value. The proper recognition of the value of copyright to society should call into serious question the frequently voiced proposition that taking copyrighted material for some worthy purpose should be permitted if no significant harm is done to the copyright owner.

The point was well made by David Ladd in the thirteenth Donald C. Brace Memorial Lecture in 1983. Mr. Ladd, who was then our register of copyrights, said, "As new technologies of use appear, they create their own community interests, constituencies, and pressure groups whose fortunes are furthered by maximum public use of copyrighted works, whether compensated or not. There are likewise noncommercial groups who see copyright as hobbling their mission by placing unacceptable strains on their budgets or complicating their work."

Mr. Ladd attacked the notion that some proof of "harm" is a prerequisite for protecting copyright owners. In copyright protection, Mr. Ladd saw important social values. He saw copyright as fostering variety and freedom among authors and publishers and supporting a cultural marketplace, which is important in and of itself.

I believe that it remains for me only to say a few words about the adequacy of our Copyright Law to protect copyrighted works in the light of the new technological developments. In his 1966 address "An Unhurried View of Copyright," Professor—now Judge—Benjamin Kaplan opened by saying, "It is almost obligatory for a speaker to begin by invoking the 'communication revolution' of our time, then to pronounce upon the inadequacies of the present copyright act." I am not moved to an apocalyptic view of where we stand. As I see it, our copyright laws are generally adequate to deal with the new methods of creating, disseminating, and otherwise working with copyrighted works.

I believe the technological changes, dramatic as they are, are more quantitative than change in kind. We will need, I suggest, modifications in the ways in which licensing and protection of rights are handled, but no drastic revisions of our copyright laws. We have gone through many technological revolutions in the intellectual property area, starting with Herr Gutenberg's bombshell and continuing with photography, sound recordings, photocopying, cable and satellite transmission, and video cassettes.

With some relatively small changes over the years, our Copyright Law has worked well for owners and users. It needs some improvement: for one, a public performance right for sound recordings; for another, an extension of the term of copyright protection to align us with the countries of the European Union. We could probably do with some fine tuning in the area of defining public performance. Otherwise, it is not broke and need not be fixed.

I certainly do not want to leave the impression that copyright owners are unmindful of the importance of education and of needs that must be fulfilled. Time Warner, a company that certainly rests on the important cornerstone of copyright, has invested approximately $12 million in wiring cable to classrooms so that teachers and students can take advantage of the state-of-the-art means of delivery of information. The proposition I do want to leave with you is that protection of copyright is important to our society—at least as important as protection of tangible property.

To put my conclusion inartfully but, I hope, effectively, educators, so far as I know, do not seek "reasonable access" to blackboards, chalk, or blank paper. There is neither reason nor justification for looking to copyrighted works for such benefits; on the contrary, doing so would be societally and economically detrimental. •

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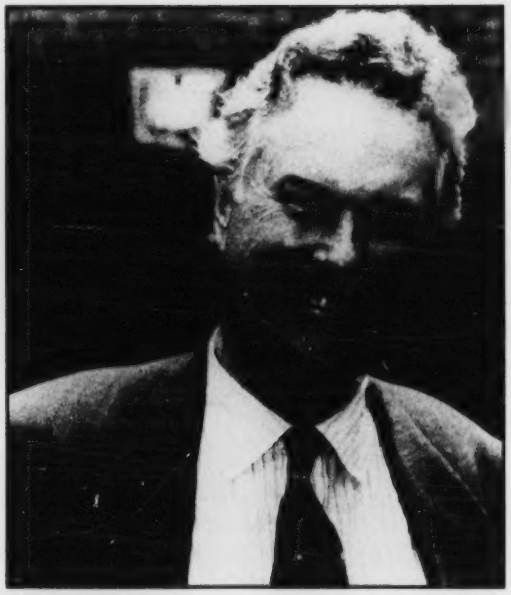


Charles Benton is chairman of Public Media Inc. and president of the Benton Foundation. A 1953 graduate of Yale University, he served in various capacities at Encyclopaedia Britannica Films, Inc. (1953–66), becoming president of Encyclopaedia Britannica Educational Corporation in 1966. Benton, who resides in Evanston, Illinois, was awarded an honorary doctorate of law from John Marshall Law School in Chicago in 1984. He represented the State of Illinois as its delegate to the White House Conference on Small Business in 1986. He is a member of the Council of Foundations' Steering Committee on Film, TV, and Video Affinity and is a delegate at large to the White House Conference on Library and Information Services. Benton serves as president of Debate America and on the boards of numerous political, educational, library, and communication organizations. The author of *Television in Urban Education,* he has also written chapters, articles, and speeches about his many personal and professional interests.

Association for Information Media and Equipment Perspective

By Charles Benton

Thanks to the organizers of this conference for bringing us together to consider new fair-use guidelines for the new media in education. The subject needs to be addressed by all the affected parties. I am here to offer my experience and judgment and also to try to represent the views of my beleaguered colleagues in the audiovisual business. But most important, I am here to listen, to learn, and to get involved however I can to be of help in our collective struggle for progress on this issue.

The Association for Information Media and Equipment (AIME) represents approximately 100 agencies interested in copyright law. Educational media copyright owners are represented as regular members; the National Association of Regional Media Centers and major school district and museum audiovisual and instructional technology directors are represented as associate members. AIME was formed in the early 1980s for people who were interested in copyright issues and how they related to fair use in education. AIME formed the Copyright Information Center, including the AIME copyright hotline, which services AIME members. We also produced a widely used video, hosted by Bill Kurtis, which is currently being revised to reflect the new technologies. AIME also writes articles, provides information on copyright issues, and sponsors workshops at many state and national educational conferences. AIME is here today because its members support the need for developing guidelines for fair use of the new media in education that are clear and usable.

Perhaps some personal background would also be useful. This is my 41st year in the educational media business—15 years with Encyclopaedia Britannica Films and 26 years with Public Media Inc. (PMI) and Films Incorporated. We call ourselves a video publisher-distributor-licensor. Between 1978 and 1982 I served as chairman of the National Commission on Libraries and Information Science, and in 1979 I chaired the first White House Conference on Library and Information Services. As one of the legacies of the Encyclopaedia Britannica, the Benton Foundation was created in 1981, and you'll notice that, on your list of participants, I am identified as its president. Two months ago, at the request of the Clinton administration, we hosted in Washington, D.C., a public interest summit for the national information infrastructure, which over 650 people from the nonprofit sector attended. Vice President Gore was the keynote luncheon speaker. Therefore, I bring to our discussion not only a business but also a public policy and public interest perspective.

I think perhaps it was this "multiple hats" perspective that led PMI to start the Television Licensing Center (TLC) in 1980, just one year after Representative Bob

Kastenmeier developed his fair-use guidelines for off-air videotaping—the educational fair access and new media guidelines of 15 years ago.

Improving accessibility for all educators was a goal of PMI when we developed the TLC in 1980 with PBS to license the off-air taping of "Cosmos." We can draw upon the experience of the Center. It allowed educators to tape off air and pay a fee to retain programs on tape. At that time videos were high priced, and this gave teachers the opportunity to use videos at a much lower price. It was the only attempt in the industry to improve accessibility through establishing a commercially viable clearinghouse for the long-term licensing of off-air copies.

Through the early and mid '80s, the Licensing Center continued to serve a useful function with BBC, Annenberg, and other major PBS programming. But then it died. What happened? I think our experience is instructive.

While all this was happening, the home video business was exploding. After settling the Beta—VHS format war in the early '80s, more and more new programs came into the market at increasingly low prices. Of course, Hollywood led the way with its feature films. Public libraries (Rochester, New York, was the first) began circulating videos "for home use only," without acquiring public performance rights from the nontheatrical distributors. Home video distributors and institutional catalog companies started to push into the educational market, using the face-to-face teaching classroom exemption as the rationale for ignoring and bypassing public performance rights. School boards and administrators began asking why there should be such a large price differential between videos for home use and videos for education. Many of the major film libraries and media centers began to atrophy as prices fell and decentralization of educational media decision making accelerated. Meanwhile, Cable in the Classroom and Whittle Communications grew with their political and business agendas only partially focused on meeting real educational needs. And PBS was rediscovering its original educational mission, most recently affirmed by Ervin Duggan, its new president, in his May 25, 1994, report to PBS member stations, discussed at the annual meeting in Orlando.

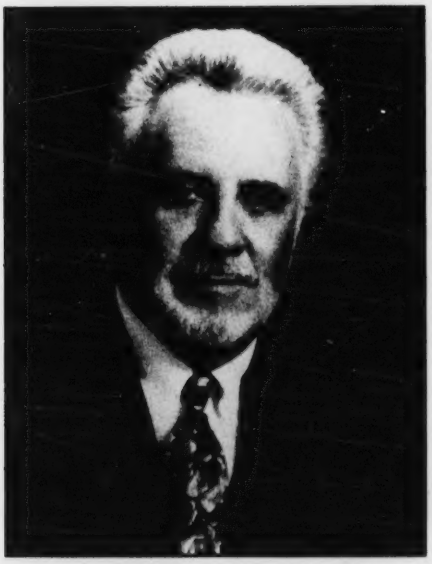
AIME is here today because its members support the need for developing guidelines for fair use of the new media in education that are clear and usable.

You may ask, what does all this have to do with the Copyright Law and the new media? What I am trying to communicate is the climate in the audiovisual sector—the "old" new media, if you will—of the educational media business where misrepresentations or ignorance of the law have led to the devaluation of public performance rights. The overall impact of this has been devastating to the audiovisual business.

Furthermore, there is only so much time for media use in the classroom, and if that time is being taken up by "free" media—whatever the source, through cable or PBS or fair use or otherwise—then one must consider point 4 of Section 107 of the 1976 Copyright Law: "the effect of the use upon the potential market for or value of the copyrighted work."

Consider how many of the established educational audiovisual producers are still producing original programs for the classroom—almost none. TV entertainment or programming produced for the general audience and somehow adapted for educational use is now more the rule than the exception.

As we're struggling with fair-use guidelines for the new computer-based multimedia programs for education, which are proliferating, we need to bear in mind both the intended and unintended consequences of the new media guidelines for video 15 years ago, and do better this time around. •



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Managing Intellectual Property on the Net

By Robert C. Heterick, Jr.

The nation's capital has been much taken with discussion of the Internet, a national information infrastructure (NII)—"information superhighways"—and even a global information infrastructure. Competition for the protocols that will undergird the NII has been waged between those who favor a de jure approach and those who follow a de facto strategy. It would appear that the de facto approach to the Internet protocols has won out by sheer force of arms, or at least by having something that works and is used, in contradistinction to the laboriously crafted and mostly ignored International Standards Organization protocols.

There may be a lesson here in approaching the issue of copyright and fair use in the networked world. The Association of Research Libraries (ARL) and the Association of American Universities (AAU) project, "Intellectual Property Rights in an Electronic Environment," attempts an extrapolation of intellectual property from the print to the networked world based upon laboriously crafted legal and political precedent. But the networked world isn't anything like the print world, and it certainly isn't a simple extrapolation of it. Without some better understanding and resolution of intellectual property issues there isn't likely to be much scholarly information on the information superhighway.

We all know the general outline of the problem. Colleges and universities have, certainly since the 1970s and 1980s, paid a fair amount of attention to patent policy. Striking it rich in biotechnology has been on the wish list of every research university development officer. Copyright policy, on the other hand, has not captured the attention of institutional administrators, who have generally seen it as part of the faculty role in research output—something with little or no market value. What has generally been overlooked is the role of faculty members as consumers in their teaching and scholarship roles.

The impact of faculty as consumers of scholarly information certainly hasn't been lost on our institutional libraries, which have contended with double-digit inflation in science, technology, and medicine serials for most of the last decade. Nor has it been lost on print publishers, many of which find packaging faculty scholarly output to be quite profitable. At the same time, abuse of intellectual property rights has been downright painful for some, particularly software publishers.

Lost revenues by software copyright holders alone are estimated to be in the hundreds of millions of dollars annually. As a consequence, we have witnessed an increasing effort on the part of owners of intellectual property to seek the stronger protection of patent. As we are all painfully aware, the Patent Office has not been prepared to deal with software as "invention" and has awarded several highly questionable patents for processes that most have considered prior art. In fact, the Patent Office has recently

moved to overturn one patent granted within the past year and is considering similar action on at least one other patent recently granted.

One would have to conclude that copyright in the networked world is not working very well, for either consumers or owners of scholarship. As we deal more and more with networked, multimedia forms of scholarship, we can only expect the situation to worsen.

The AAU/ARL report calls for several activities on the part of our colleges and universities. All are long overdue. The report encourages the academic community to come to consensus on what should constitute fair-use rights in an electronic environment. It calls for a study on creating and strengthening competitive university and society-based electronic publishing outlets. And it calls upon institutions to volunteer to create model policies for institutions as copyright users and as creators of copyrightable materials.

All this is good, but we need more, I think. And what we need isn't likely to come from our historic community of scholars but is much more likely to arise from the networking community much as the Internet protocols did—by experiment, by consensus on what works, and by common agreement on what is useful.

The print paradigm is one that invests heavily in up-front effort because it was expensive to typeset, to have reasonable press runs, to maintain inventories, to misestimate the number that will be sold, and to distribute artifacts of tangible weight and dimension. Much as most of our financial activities were preaudited before computers, our print media has been pre-everything for similar reasons. In the electronic age it is not even clear that editorial judgment should be exercised before "publication." It may be the case that some of the ideas that are needed to make copyright work in the information age are already being tried on the Internet and bulletin board systems.

There is already a fair amount of research being done on how to transfer copyright royalties on the net. There are likely more folks than we know experimenting with embedding copyright indicators in message headers or checksums. I'm sure some folks are experimenting with "knowbots" or agents that carry and disseminate information about copyright. A number of perceptive students of the Internet and copyright have already made the observation that the time-value of information might be recognized in an electronic environment by decreasing royalties over the life of copyright for ephemeral scholarly materials.

So, by all means, let's pursue the AAU/ARL agenda. But let's also try to understand in what ways the electronic environment is different from print. Digital information is nonexcludable (copying is almost free) and nondiminishable (copying is almost perfect). These are not characteristics of the print world. Derivative works and the bundling of public with private goods by value adders will be characteristic of the networked world. Neither form is particularly commonplace in the print world.

While the rationale behind fair use can be found directly in the Constitution, it can also be seen as a subsidy. Unlike most federally directed subsidies, this one does not direct federal funds to consumers or their agents, but rather imposes an almost unenforceable burden of unknown magnitude on copyright owners. There is no clear or compelling evidence that fair use will work in the networked world. This is not to say that there shouldn't be federal subsidies or investment strategies to ensure the rapid dissemination and easy use of "invention," only to say that contract is likely to be the sine qua non of the networked world. And just as the competitive base of the NII will drive out cross subsidies, contract is likely to drive out fair use.

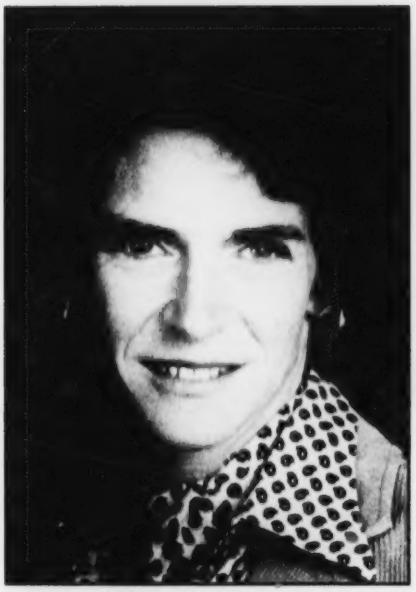
If we can't extrapolate from the print to the networked world, how should we approach the issue of copyright and fair use? I believe that we must create reasonable scenarios of what we expect the networked world to become and reason back from them. And as we have done with Internet protocols, we need to experiment and come to community consensus on what works and satisfies the needs of both copyright consumers

Copyright in the networked world is not working very well, for either consumers or owners of scholarship. As we deal more and more with networked, multimedia forms of scholarship, we can only expect the situation to worsen.

and owners as well as the federal interest in rapid dissemination and use of the knowledge that supports a robust economy.

Can the existing copyright and fair-use provisions be fine-tuned to cover intellectual property in the networked world? I doubt it. Wrong choices, no matter how well intentioned, can stifle the growth of scholarly information on the networks of the future. Wrong choices will ensure an entertainment-based rather than knowledge-based networked world and we will have missed another opportunity and encouraged the creation of another "vast wasteland."

The stakes are high. I think Abraham Lincoln captured it well in another context when he observed, "The dogmas of the quiet past are inadequate for the stormy present and future. As our circumstances are new, we must think anew, and act anew." •



Carol A. Risher is vice president for copyright and new technology for the Association of American Publishers (AAP), in the Washington, D.C., office. She represents this country's publishing industry on the International Publishers Copyright Council and the U.S. State Department Advisory Committee on International Intellectual Property and is currently responsible for copyright enforcement efforts in ten countries and the United States. Risher has lectured at national and international meetings on copyright and new technology and has testified before Congress and executive branch agencies on new technology issues of concern to the publishing industry. In addition to her work at AAP, she served as executive director of the International Intellectual Property Alliance (1984–91), on the board of the National Information Standards Organization (1989–90), and on the Library of Congress Optical Disk Advisory Board (1986–91). She is also an instructor at the Howard University Press Book Publishing Institute.

Use of Copyrighted Works in Multimedia: A Publisher's Perspective

By Carol A. Risher

The use of copyrighted materials in multimedia works is really no different from other uses of copyrighted materials—a marketplace develops to respond to needs. I would like to go through a few real-life experiences to demonstrate how that occurs.

International Copyright Information Center

In 1971, when the international copyright conventions (Bern and Universal) were modified to provide compulsory licensing for publishers in developing countries to get the rights to reprint or translate works published in developed countries, there was tremendous concern that the publishers in developing countries wouldn't be able to find the copyright holders to try to negotiate licenses. So each of the countries created an "International Copyright Information Center" whose purpose was to help publishers in the developing countries find the copyright holders for the purpose of negotiating reprint and translation licenses. When I joined the Association of American Publishers (AAP) in 1977, I was named, among several titles, director of the United States office of the UNESCO-sponsored International Copyright Information Center (INCINC). We were still getting a few requests a year in 1977, but today most people in the developing countries know how to contact copyright holders and their need for INCINC assistance has declined. It's a service we still offer, particularly to the East European countries and those that have not used our services before, but there isn't the same fierce problem of finding copyright holders of copyrighted works.

Public Broadcasting Expediting Center

In 1978, when the 1976 U.S. Copyright Law became effective, another title was added to my list. I became director of the Public Broadcasting Expediting Center. Section 118 of the Copyright Law deals with public broadcasting uses of copyrighted works, and no compulsory license was put in for the use of literary materials—materials in books such as poems and short stories. Instead there was an antitrust exemption in the act that allowed publishers to sit down with the public broadcasting entities and negotiate a kind of model licensing plan. One of the concerns expressed by the public broadcasting entities during the negotiation was how they would find the copyright holders and what to do if the publishers did not respond to their permission requests. What if the process took too long? And so AAP set up the Public Broadcasting Expediting Center and said that if any public broadcasting entity or anyone producing for such an entity was having problems locating a copyright holder or had sent a request to a copyright holder and it was not being handled in a timely fashion, that person could call the Center and it

would expedite the matter. In the early days there were a few calls a month; these eventually dropped to a few calls a year, and last year we had no calls at all. The public broadcasting entities learned how to find copyright holders, and publishers simply responded to the needs of the marketplace. There was no longer any need for the AAP to expedite requests.

Optical Disk Project

In the early 1980s the Library of Congress came forward with an idea to create an optical disk project. The Library of Congress, of course, has a lot of useful material in its stacks, and officials there thought if the information could be digitized and stored on an optical disk, it could be made available to users with terminals. The AAP offered to help the Library. We asked officials there to identify the list of materials they wanted to put in the system. These officials gave us a list of 74 publishers of potentially usable materials. We wrote letters to all of these publishers noting that since they were the copyright holders, the Library of Congress would be writing directly to them to request permissions, but AAP would like to facilitate the pilot project. We noted that there was much for all participants in the projects to learn, including whether users would want to read the information on screen or automatically print out everything. No one knew how users would react or how the system would work. Individual publishers weren't even sure whether each use (browsing, on-screen reading, downloading, printing) would involve separate accounting. The publishers and the Library of Congress developed a very effective and useful tool by dialoguing. The Library of Congress received permissions for, I think, all 74 serial publications to be digitized over a two-year period, stored on an optical disk, and used. At the same time, the Library of Congress convened two working groups: one comprising proprietors and the Library, the other comprising librarians and the Library. Sometimes the two groups met together. The theory behind these advisory groups was, let's identify what your concerns are. Let's realize what it is that's driving your decisions. Let's talk to each other, but let's also talk among ourselves. It's the spirit that has permeated everyone's remarks this morning—the importance of talking to one another.

The publishing community is interested in working with users in doing experiments, pilot projects, and models so that together we can envision a new environment.

Copyright Clearance Center

In the private sector, the Copyright Clearance Center (CCC) has received from many publishers the right to license the photocopying of materials from publishers that are participating in the system. The CCC system is voluntary; publishers choose to participate. The publishers set the fees for copying; CCC goes to for-profit corporations and says, we are here to offer you a license; these are all of the publishers whose works are in our system, and if you take the license, this is what you can do. One after another the corporations have said they were interested in "electrocopying." They explained that they have big computers and databases and would like to scan material, store it in the database, and provide access by their researchers at their desks rather than having them go to the corporate library. CCC told the corporations that they did not have that right from the publishers but would see what they could do to talk to the publishers. They came to AAP, and we created a special task force to deal with these requests. What we found is that if you tell copyright holders that people want to scan your material and stick it in their database, they all say, "Wait a minute! What does this mean?" But when the CCC came with specifics noting a particular campus that would like to create a totally digital library to serve one of its disciplines and had identified the list of materials it would like to have in digital form, the publishers responded differently. It was a manageable list—only one of a publisher's 40 journals, only three of another publisher's many books. They were all willing to participate in a pilot project because it presented

an opportunity to address concerns and interests such as system security, whether on-screen resolution would be good enough to communicate the very complex x-ray and high-level graphics in some books, and whether the electrocopying would undermine or support the total dissemination goal.

Then another project was brought to the group by CCC that needed other materials. And similarly, one by one, up to 15 projects were developed. AAP members individually gave approval, through the CCC as middleman, to participate in these projects because everybody had something to gain by working with the community, by dialoguing, by addressing the very complex technological and other issues that we all faced.

There will be multiple avenues to support the needs of multimedia users and developers—the private sector will respond to the needs of the marketplace.

Academic Permission Service

AAP is probably best known for the Kinko's litigation, in which AAP coordinated a lawsuit against the chain for its infringing photocopying. As a result of this lawsuit and the determination by the courts that making course packs is an infringement and that anyone who does so must get permission for everything, the CCC developed a new Academic Permission Service (APS) to facilitate the needs of both publishers and the marketplace. Publishers put their materials in the APS system, and CCC licenses those who make course packs. This is a relatively new service; it is another example of the marketplace responding to need. In the two years of APS's existence, the number of permission requests that CCC has been able to handle has doubled each semester. If you need to get a permission, this service is one way to do it. The other, of course, is to go directly to the copyright holder.

Electronic Reserve Rooms

AAP members are also talking with people in the library world who are creating "electronic reserve rooms." Scanning technology makes it possible to scan, store, and print on demand. AAP representatives are attending meetings hosted by the Association of Research Libraries and the National Association of College Stores to discuss this topic. We have talked individually with officials at various campuses about how they can create electronic reserve collections that will work for all players, recognizing copyright and supporting the educational needs.

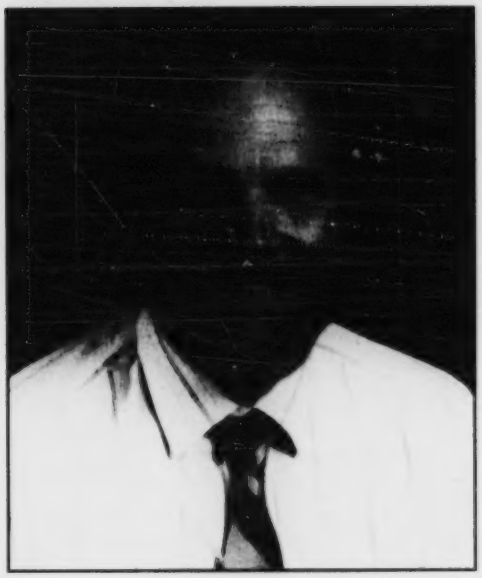
Xerox's Glyph

There's another new project that's just in the talking stage. I've received two phone calls from officials of the Xerox Corporation. They have developed something called the Glyph, which makes it possible to put all the necessary copyright information—who is the copyright holder, what is the fee for printing, what is the fee for scanning, whom do you contact, what is the address—in a tiny microscopic dot that can be embedded in a small line or border on a page. Thus the publisher can provide all the necessary information on the printed page. And the Glyph reader works just like the barcode scanner at a supermarket: when a page is put on a Xerox machine or any other copier that has such a reader, the copyright information can be tracked and recorded. Eventually, a billing and payment mechanism can be established. Obviously the technology is there, and Xerox would like to work with publishers on trying it out.

The Role of the Marketplace

We are living in a very exciting transition period. We're watching technologies grow. We're trying different things. We're experimenting, and publishers want to work with all of the user communities to understand their needs and their wants and to consider the things publishers can develop to meet those needs. The publishing community is interested in working with users in doing experiments, pilot projects, and models so that

together we can envision a new environment. When Barbara Ringer spoke earlier about the project at the Library of Congress to create a database of copyright holders, it reminded me of a report the AAP received in February from the Japanese Ministry of International Trade and Industry, which has designed and was asking for worldwide comment on a global database of copyrighted works. It envisions a voluntary system. Everybody who holds copyright in animation, video, graphics, music, or text can voluntarily register with this Japanese database and set their own fees. And there are incentives to encourage registration. But the impetus behind the project is that the Japanese government wants everyone to have a central place to go to find out who holds copyrights. This morning you heard that the U.S. government is looking at this kind of project too, and what I've said to you today is that there are also projects in the private sector. There will be multiple avenues to support the needs of multimedia users and developers—the private sector will respond to the needs of the marketplace. •



As director of Academic Computing Services at California State University–Long Beach (CSULB), **Charles Schneebeck** is responsible for developing and coordinating programs for faculty development and advises and consults with faculty and students in the appropriate uses of computing technologies in support of instruction and instructionally related research. A veteran of 21 years' teaching experience, Schneebeck is involved in CSULB's Multimedia in Motion Project, a universitywide effort to incorporate multimedia into learning and teaching. In addition, he is overseeing a Collaborative Multimedia Database Project to archive images for use in art history and the biological sciences and make them available to faculty over the Internet. He is co-chair of the Teaching Excellence Advanced through Multimedia, or TEAM, Project, which coordinates CSULB's campus efforts to improve instruction through the use of technology.

Copyright Law: Providing Access to Information

By Charles Schneebeck

I was invited to address the issue of copyright as it applies to the development of new media programs from the point of view of the academic computing administrator. Copyright is a legal issue, and I find the fair-use provisions of the law to be vague and confusing. Neither my education nor my work experience has prepared me to advise others on what is appropriate, fair use of copyrighted works. Yet as a service provider to the university community, I am often asked to advise faculty and students on when and how it is appropriate to include copyrighted material in new media programs they are developing. I view this as a no-win situation.

I will describe my view of the problem and suggest some possible actions, but first I need to clarify some of the terminology I use. There seems to be some confusion about the difference between multimedia and new media. The term *multimedia* has been with us for years. It used to mean running six slide projectors, a movie projector, and an audiotape at the same time. For some it still has that meaning. The term *new media* has evolved in part to deal with the ambiguity of multimedia. New media refers to the ability to use digital text, illustrations, photographs, sound, voice, animation, and video in a seamless way to create interactive computer programs. The interactive nature of new-media programs often requires a substantial quantity of material to be effective. Finding sources of information and knowledge that can be legally used in new-media presentations can be a major obstacle for students and faculty.

Because access to information and knowledge is the focus of this conference, I find it useful to distinguish between information and knowledge. Information consists of facts that may be unorganized and even unrelated. It is the raw material of the intellectual process, and it exists in a variety of forms, including pictures, sound bites, video clips, text, animation, and raw numerical data, all of which can be converted into a digital format. Knowledge is an organized body of information, commonly published in the form of a book, a video, or a computer program. Paintings and artistic photographs are examples of materials that do not fit neatly into the definition of information or knowledge.

The need for a conference to discuss fair access to the new media is a result of change that is happening at a rate unprecedented in human history. Technology provides us with new ways to learn, work, and play, but it is progressing much faster than our legal and social system can adjust. Peter Drucker's description of the process is powerful and thought provoking:

> *Every few hundred years throughout human history, a sharp transformation has occurred. In a matter of decades, society rearranges itself... its world*

view, its basic values, its social and political structures, its arts, its key institutions....Fifty years later a new world exists....Our age is such a period of transformation. ("The New Society of Organizations," Harvard Business Review, *September/October 1992, p. 95)*

Prior to this transformation period, the publishing industry and higher education enjoyed a mutually beneficial relationship. An essential part of the relationship is the need for publishers to make a profit and to share that profit with the creators of knowledge, thereby providing an economic stimulus for the creation of books and other similar materials. Publishers provide a review process, package the product, and market it to retailers. These activities add value that is not easily provided by the author. In return, authors grant to the publishers exclusive rights to the information. But as more information is produced and made available in a digital form, much of the "value added" in the past will no longer be necessary. What new value will the publishers add in a world of digital information? Can they find a role that does not require locking up information to make it scarce and thereby more valuable? When information can be used many different ways, what incentives will be required for authors to sign away all of their copyright to information?

Because of changing technology, the economic model is shifting from a focus on the publishers of print materials to a much more diversified group. The developers of hardware and software have a vested interest in being sure information is available for use in new media. Some may try to control information; others will try to make information available and thus encourage the creation of knowledge compiled in media that can be packaged and sold. Still others will find an economic incentive to develop tools to manage the rapidly increasing information base.

The paradigm is changing. We all know where we have been, but it is not clear exactly where we are going. All the parties involved in this issue must make adjustments in the way we do business. We must make major decisions that are bound to affect our economic future, and we do not and cannot know the details of the emerging paradigm. We must be very careful to avoid the temptation of planning for the future by looking to the past, and we must stay alert to the fact that we need strategies that are flexible and can be adapted to a changing environment. Educators must not fall into the trap of helping to develop specific guidelines that are more restrictive than the law intended.

Although it is imperative that we make major adjustments in the way we do our work, it is equally important that we do not abandon the values and ethics that are fundamental to the educational community. As we develop policies and guidelines, we will need to focus on the difference between what is possible, what is legal, and what is acceptable.

We need to act now with a focus on increasing access to information. The education community plays a major role in creating the materials publishers need. As creators, we can exercise our rights under the existing law to control the supply and distribution of information. We can use technology to solve some of our problems and to be proactive participants in building a new paradigm.

Examples of some actions being used to increase access are the Collaborative New Media Database project; the Bill of Rights and Responsibilities for Electronic Learners project; and an effort to encourage faculty to maintain rights to their intellectual property.

The Collaborative New Media Database is a pilot project, funded by the California State University Chancellor's Office, that involves four campuses: California Polytechnic at San Luis Obispo and the California State Universities at Long Beach, San Jose, and Chico. The purpose of the project is to build two databases, one for the biological sciences and the other for art history, that can be accessed over the Internet by students

and faculty. Each person who chooses to contribute to the database is asked to sign a statement confirming ownership of the information being contributed and giving permission for others to use it for nonprofit educational purposes. The owner maintains copyright. A developer who wants to use it for commercial purposes must get permission from the copyright holder. The name of the owner is attached to each piece of information and database users are asked to credit the owner in their presentations.

This approach takes advantage of the fact that over the years teachers assemble significant collections of materials for instructional purposes. Biologists make 35-mm slides, video recordings, audio recordings, photographs, written materials and diagrams, and they own the copyright. All of these materials can be converted to a digital form with relative ease, then stored and distributed over networks. The plan is to house the database on World Wide Web servers at Cal Poly–San Luis Obispo and CSU–Long Beach, making the information available to anyone on the Internet with an ethernet connection.

One spin-off from the project is taking place at this time. The entire electron micrograph collection of the Biology Department at CSU–Long Beach is being digitized and placed in the database. We anticipate over 3,000 electron micrograph images will be in the database by the end of the summer. The original images cost more than one million dollars to create, but because they are stored in file cabinets in the form of negatives and prints, students and faculty have very limited access. Digitizing the images adds value through increased access for learning and teaching. We are currently using the same strategy with one of the special collections in the university library.

Perhaps it is time to form a coalition of educational institutions to expand and refine this project to increase access to information. From the pilot, I am convinced that the model can work, and it will become more effective with participation by more individuals and institutions.

We must be very careful to avoid the temptation of planning for the future by looking to the past, and we must stay alert to the fact that we need strategies that are flexible and can be adapted to a changing environment.

The Bill of Rights and Responsibilities project, which is affiliated with the American Association for Higher Education (AAHE), was begun in 1990 as part of the Educational Uses of Information Technology program of EDUCOM ("The Bill of Rights and Responsibilities for Electronic Learners," *EDUCOM Review*, 28:3, 1993). It is a model computer and computer network policy addressing the rights and responsibilities of individuals, schools, and colleges in the 21st century.

A premise of the bill is that technological empowerment of individuals and organizations is a requirement for the educational process and for lifelong learning. Empowerment requires access to hardware and software tools and to information. Those who are unable to access critical resources for whatever reason are deprived, and their education lessened. The effect is the same whether the reasons are technical, as in the past, financial, or contractual, as we fear they may be in the future if educators do not exercise their legal rights to make some uses of their collections and creations available with specific limits and legal controls. For example, materials from the Collaborative New Media Database are available at no charge when used for nonprofit educational purposes and when attribution is properly given. This approach can be critical to education in the future as budgets get tighter, resources become shared, and technology enables unique collections to be accessed and used anywhere in the world.

As electronic collections enable teachers and learners to access and use resources not otherwise available, these same individuals need to recognize and accept the responsibility they incur as participants in electronic communities. They must respect the rules. If users exploit the readily available resources for unintended purposes, then the contributors will withdraw their current resources and not contribute additional works to the collection. If education ignores the need to inform members of the community about their responsibilities and to make them aware of the consequences of their decisions and actions, then it will lose an opportunity to increase access to information it creates.

We are now at a point where it is appropriate for the creators of information to view the publishers as users, and lease to them the right to use information instead of giving them total ownership.

The third activity is to encourage creators of information to maintain ownership of their intellectual property. Information stored in a digital format can be used in ways and places that are very different from those used in the past. A photograph or diagram that is used in a book could be useful for an entirely different purpose in a tutorial or as raw information in a database. As a result, the value of the information is changing. In the past, authors gave publishers the copyright to materials they produced, and in return publishers packaged, marketed, and distributed the materials. There was no compelling reason for the author to retain the right to use the information for other purposes. Today electronic packaging and distribution is rapidly eliminating the need for the complex infrastructure that is necessary for traditional publishing, which involved printing, binding, promoting, and shipping. For economic interests, and in the interest of providing access to information for the educational community, it is time for authors to change the traditional model. Instead of granting publishers the copyright to their works, they should maintain their rights to use their creations for a variety of purposes. The publishing industry developed the model of how to lease or rent information to potential users. We are now at a point where it is appropriate for the creators of information to view the publishers as users, and lease to them the right to use information instead of giving them total ownership. It is simply a matter of the creators of information exercising their rights under the copyright law.

For this approach to work, we must act collectively. Initially, most publishers will probably not publish works from authors who won't accept the status quo. And publishers will need assurances that the information they lease will not be redistributed in a form that is in direct competition with their product. It will not be an easy transition, but this kind of change can happen because creators are now able to produce and control the supply of information.

In summary, we are involved in the transformation Peter Drucker describes, and in the process we are rearranging ourselves. The traditional relationship between publishers and educators cannot survive unchanged. It is not a case of good guys and bad guys but a dynamic process that will result in a new way of doing business. Some educators and publishers are likely to resist change, but the result may be that the harder they push for the status quo, the less likely they are to survive the change.

Now that information is easy to package and distribute electronically, publishers have the task of defining the added value they will bring to the digital world. And educators must exercise their right and responsibility to use the copyright law in a manner that fosters the values of education. The fact is that information is going to flow. The genie is out of the bottle and there is no going back. It is in the best interest of both education and the publishing industry to explore new relationships that recognize the needs of both parties. •

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An educational copyright specialist who earned her master of science degree in library science from Wayne State University, **Hope Roland Botterbusch** is the executive director of Manatee Educational Television in Bradenton, Florida. Previously, Botterbusch was the district copyright contact for the School Board of Pinellas County in Clearwater, where she wrote the county's district copyright guidelines. She has been the chairperson of the Copyright Committee of the Association for Educational Communications and Technology since 1990, having served on the committee since 1988. Botterbusch's career spans twenty years, during which she has been a school library media specialist, a classroom teacher, a district audiovisual and instructional television supervisor, a corporate trainer, an adjunct university professor, and an educational consultant. She is coordinator of the column "Copyright and You" in *TechTrends* magazine and a frequent speaker at local and national professional conferences. Botterbusch has numerous educational honors, the most recent being the 1994 Industry-Education Utilization Award from the National Association for Industry-Education Cooperation.

Position Statement of the Association for Educational Communications and Technology

By Hope Roland Botterbusch

The Association for Educational Communications and Technology (AECT) is a leading international, professional association dedicated to the improvement of instruction through the utilization of media and technology. The Association provides a forum for the exchange of information among such professionals as audiovisual media specialists, library and information specialists, microcomputer specialists, educational administrators, researchers, teachers and professors, television producers and directors, and instructional technologists.

The mission of AECT is to provide leadership in educational communications and technology by linking professionals holding a common interest in the use of educational technology and its application to the learning process.

The charge of AECT's Copyright Committee is to keep members informed of current copyright issues, develop and review positions on copyright, develop and review copyright materials published by AECT, and monitor changes to the Copyright Law of 1976 and related legislation. This charge has been delegated to a committee comprised of K–12, college, and university educators and scholars, all of whom hold some expertise in the area of copyright. All but one of these committee members offer informed opinions but do not dispense legal advice. The one committee member who is able to dispense legal advice regarding copyright is a renowned copyright attorney who is an integral part of these proceedings today.

The Copyright Committee's newest and most exciting charge, and the reason I am here today, is to communicate AECT's position on educational fair access for the use of copyrighted works in multimedia programs produced by faculty and students for educational purposes.

Position Statement on Fair Access of Copyrighted Works in Multimedia Programs

First, AECT vigorously promotes the adherence to the Copyright Law of the United States of America contained in Title 17 of the United States Code and, in particular, to Section 107 Limitations on Exclusive Rights: Fair Use.

Second, AECT has promulgated and subscribes to a code of ethics that is intended to aid its members individually and collectively in maintaining a high level of professional conduct. AECT's Code of Ethics includes a statement on copyright that reads:

> *In fulfilling obligations to the profession, members shall inform users of the stipulations and interpretations of the copyright law and other laws affecting the profession and encourage compliance.*

Third, AECT recognizes that the standards of the House Subcommittee on Courts, Civil Liberties, and Administration of Justice Negotiating Committee — specifically, the "Fair-Use Guidelines for Off-Air Videotaping" — reflect the negotiating committee's consensus as to the application of fair use and carry the weight of law.

In light of the three points above, AECT recommends adoption of a set of proposed criteria regarding fair access for the use of copyrighted works in multimedia programs produced by faculty and students for educational purposes.

Because of the unique nature of multimedia development, AECT recommends a review of the appropriateness of the '10/10 guidelines.'

Recommended Guidelines

The following criteria should be included in "The Fair-Use Guidelines for Multimedia Programs." The guidelines should

1. encompass grades pre-school, K–12, vocational, college and university education;
2. be for the purpose of scholarship, research, criticism, comment, news reporting, teaching, or learning;
3. include student use to demonstrate competencies;
4. include faculty use for scholarly research and instruction;
5. provide for the use of out-of-print materials;
6. provide for the use of copyrighted materials when the copyright owner cannot be located from which to obtain permission;
7. define "fair use" in terms of the portion used in relation to the whole work; and, most important
8. define *multimedia*.

Topics Needing Discussion

First, a discussion of what constitutes multimedia is needed. The AECT Copyright Committee has developed a working definition of *multimedia* as material taken from various audio, visual, and textual mediums that is combined by means of an electronic device.

Second, to define fair use, a discussion of what is commonly known as the "10/10 guideline" is in order. Reference to such a guideline may be found in the records of discussions of the Congressional Committees prior to the adoption of the Copyright Law of 1976. The "10/10 guideline" may be summarized to state that

> *ten percent of a work may be copied for educational purposes as long as that ten percent constitutes ten percent or less of the educator's or student's original finished work and that the ten percent copied is not the essence of the work.*

Because of the unique nature of multimedia development, AECT recommends a review of the appropriateness of the "10/10 guidelines."

Third, a discussion is in order for extending the meaning of the term *instructional setting* to the library media center because face-to-face instruction takes place there.

Finally, AECT believes the fair-use guidelines currently in place should be used as a basis for developing fair-use guidelines for multimedia. Those guidelines that apply are found in the Copyright Law of the United States of America, Title 17 of the United States Code Section 107, "Limitations on Exclusive Rights: Fair Use," and Section 110, "Limitations on Exclusive Rights: Exemptions of Certain Performances and Displays."

Conclusion

AECT has members who individually hold copyrights to their creative works. In addition, AECT has members who desire, in an educational setting, to utilize copyrighted works for valid instructional and educational purposes. Thus we strive to maintain a balanced perspective as to the extent and limitations of fair use. We sincerely feel that there is a need to provide fair-use access to copyrighted materials to be used in multimedia programs in an educational setting, while protecting the intellectual property rights of the authors. •

AECT Code of Ethics

Preamble

1. The Code of Ethics contained herein shall be considered to be principles of ethics. These principles are intended to aid members individually and collectively in maintaining a high level of professional conduct.

2. The Professional Ethics Committee will build documentation of opinion (interpretive briefs or ramifications of intent) relating to specific ethical statements enumerated herein.

3. Opinions may be generated in response to specific cases brought before the Professional Ethics Committee.

4. Amplification and/or clarification of the ethical principles may be generated by the Committee in response to a request submitted by a member.

Section 1—Commitment to the Individual

In fulfilling obligations to the individual, the members:

1. Shall encourage independent action in an individual's pursuit of learning and shall provide access to varying points of view.

2. Shall protect the individual rights of access to materials of varying points of view.

3. Shall guarantee to each individual the opportunity to participate in any appropriate program.

4. Shall conduct professional business so as to protect the privacy and maintain the personal integrity of the individual.

5. Shall follow sound professional procedures for evaluation and selection of materials and equipment.

6. Shall make reasonable effort to protect the individual from conditions harmful to health and safety.

7. Shall promote current and sound professional practices in the use of technology in education.

8. Shall in the design and selection of any educational program or media seek to avoid content that reinforces or promotes gender, ethnic, racial, or religious stereotypes. Shall seek to encourage the development of programs and media that emphasize the diversity of our society as a multicultural community.

AECT believes the fair-use guidelines currently in place should be used as a basis for developing fair-use guidelines for multimedia.

Section 2—Commitment to Society

In fulfilling obligations to society, the member:

1. Shall honestly represent the institution or organization with which that person is affiliated, and shall take adequate precautions to distinguish between personal and institutional or organizational views.

2. Shall represent accurately and truthfully the facts concerning educational matters in direct and indirect public expressions.

3. Shall not use institutional or Associational privileges for private gain.

4. Shall accept no gratuities, gifts, or favors that might impair or appear to impair professional judgment, or offer any favor, service, or thing of value to obtain special advantage.

5. Shall engage in fair and equitable practices with those rendering service to the profession.

Section 3—Commitment to the Profession

In fulfilling obligations to the profession, the member:

1. Shall accord just and equitable treatment to all members of the profession in terms of professional rights and responsibilities.

2. Shall not use coercive means to promise special treatment in order to influence professional decisions of colleagues.

3. Shall avoid commercial exploitation of that person's membership in the Association.

4. Shall strive continually to improve professional knowledge and skill and to make available to patrons and colleagues the benefit of that person's professional attainments.

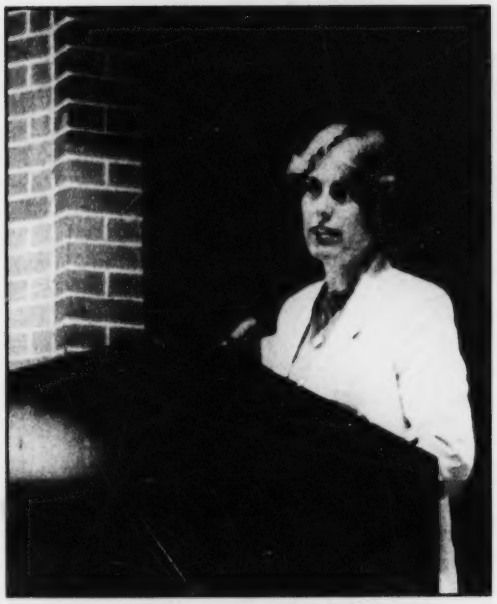
5. Shall present honestly personal professional qualifications and the professional qualifications and evaluations of colleagues.

6. Shall conduct professional business through proper channels.

7. Shall delegate assigned tasks only to qualified personnel. Qualified personnel are those who have appropriate training or credentials and/or who can demonstrate competency in performing the task.

8. Shall inform users of the stipulations and interpretations of the copyright law and other laws affecting the profession and encourage compliance.

9. Shall observe all laws relating to or affecting the profession; shall report, without hesitation, illegal or unethical conduct of fellow members of the profession to the AECT Professional Ethics Committee; shall participate in professional inquiry when requested by the Association.



As associate dean of instruction at Paradise Valley Community College in the Maricopa County Community College District (MCCCD) in Phoenix, Arizona, **Mary Lou Mosley** has responsibility for the coordination of summer school, MCCCD's videoconferencing network classes, and the Apple Community College Alliance project. She also manages the Macintosh computer labs and teaches computer skills to students and supports faculty doing multimedia development work on the Macintosh. Under her direction, the district developed an ESL software project and a multimedia demonstration center for faculty. Mosley has worked with MCCCD's Intellectual Rights Committee, serving as its chairperson for two years. She holds both a bachelor of arts in history and a master of arts in library media from the University of Colorado as well as a Ph.D. in educational technology from Arizona State University. Since 1978, she has been a librarian, a high school library media specialist, and an instructional designer.

Multimedia Development and Copyright Issues in the Maricopa Community Colleges

By Mary Lou Mosley

The Maricopa County Community College District (MCCCD) in Phoenix, Arizona, consists of ten community colleges and centers and serves approximately 90,000 students. MCCCD has been a leader among community colleges in the integration of technology into instruction, including providing many computer labs for students, giving every faculty member an office computer and software, supporting faculty development of instructional materials that supplement classroom instruction, and exploring new technologies and new types of classrooms. MCCCD is also an active member of the League for Innovation in the Community Colleges, and several of our colleges have active partnerships with computer companies. Glendale Community College is an IBM demonstration center for multimedia instructional development and Paradise Valley Community College focuses on multimedia instructional development for Apple as a member of the Apple Community College Alliance.

Community college students represent a variety of needs, experiences, and learning styles. They range in age from 17 to 80-plus, with many of them falling into the category of adults returning to education. They attend school for a variety of reasons, including the intent to transfer to a four-year institution, to update or improve job-related skills, to obtain retraining, to develop skills in order to get a job, and to enhance personal growth and interests. Many of them bring work and life experiences with them that need to be taken into account when teaching. Finally, many community college students learn in different ways, with different learning styles, than the student who graduates from high school and goes directly to college. Our instructional materials must address the needs and motivations of the adult learners who do better if they can control the pace of their learning, interact, respond, and get information in ways that are alternatives to the traditional lecture. For these reasons, multimedia and computer-based instructional materials are very successful with the community college student.

Development of Multimedia Instruction

MCCCD faculty members have been very active in developing alternative methods of instruction that rely on various technologies, such as computers, video, distance learning, audio and video conferencing, and multimedia. The computer-based materials have been developed on Macintosh, NeXt, DOS, and VAX platforms. These materials are designed for multiple uses, including classroom presentation, review and reinforcement of instruction, exploration beyond the classroom, and independent learning. In addition to classrooms, students use these materials in computer labs and content-specific labs such as biology, chemistry, math, and English; in learning centers; and in libraries and

the Information Commons. In some cases, students take the materials home. Although the faculty members often develop the materials to use with their own students only, colleagues soon ask if they also can use the materials with their classes.

The faculty-developed instructional multimedia materials range from simple one-concept or one-skill stacks to complex modules that include detailed color illustrations, still photographs, video, music, and interaction with other resources or media. Many multimedia modules are being created that access videodiscs or CD-ROMs and incorporate QuickTime clips. Music or sound is another key aspect of the modules. The modules are created in a variety of authoring programs and languages including HyperCard, SuperCard, ToolBook, Director, Authorware, Course Builder, and many others. Students also are developing multimedia materials for class projects, and faculty are using commercial multimedia instructional programs, such as the ABC News Interactive series, *BioSci II*, or Mozart's *Magic Flute*.

Several of the colleges are producing their own videodiscs and CDs based on video they have shot themselves because of the lack of clear guidelines and the complexity of the process for getting permission for using commercial clips. Faculty members also are relying on royalty-free music clips or on colleagues to compose and play music for their instructional modules. Others are drawing their own pictures and graphics, pixel by pixel, since finding the copyright owner is so difficult. Yet the question still arises whether they are actually copying or making a derivative work when they create their illustrations and pictures for their programs.

Copyright Issues and Concerns

As faculty members have developed multimedia materials, they have raised issues and concerns about copyright, in terms of both what they want to incorporate in their materials and the protection they have after developing them. Many of their concerns about using parts of others' copyrighted work are the same as those being addressed at this conference. A number of other situations and questions about faculty developers' rights and responsibilities have arisen as they become more involved in developing multimedia instructional modules. Some examples include

- creating a QuickTime clip from a small segment of a videodisc
- scanning in a photograph of the "Mona Lisa" to use in a HyperCard stack
- using popular music as introductory background by accessing the CD
- typing the dialog from a videodisc so that students can read while the videodisc is playing
- drawing graphics and pictures in a paint program that are based on a textbook illustration but are common knowledge
- changing a scanned/digitized copyrighted image to meet their own needs
- digitizing a speech recorded off TV to include in a module
- adapting others' multimedia programs to fit their own situation
- demonstrating a multimedia module at workshops and conferences and sharing it with colleagues at the home college or at other colleges
- deciding where to give credit for using another person's work, as in a clip in a videodisc or CD that they are developing.

Our faculty members are willing to ask for permission to use others' work and to pay royalties, but they have had great difficulties accomplishing that. For example, an anthropology instructor has developed multimedia materials that would be enhanced if he could use several illustrations from a book. When he contacted the publisher, he was told that no one really knew who owned the copyright to the illustrations, so no one could help him. In another case, a faculty member wanted to use some music clips and contacted ASCAP, which gave him incorrect and misleading information. A member of

the psychology department wanted to use some video clips from a series that the college owned and was given verbal permission to do so. When she put her request for permission in writing, however, she was told that written permission would not be granted.

Faculty members want clear guidelines and answers to questions so they can develop instructional materials to use with their students and still adhere to the Copyright Law. Essentially, our faculty is asking for the following actions:

1. Development of guidelines for using parts of others' work, whether print, audio, video, still images, graphics, or scripts, in instructional multimedia materials that they are developing to use with their students. The guidelines should also address—or a process should be established—that will enable faculty members to share these materials with colleagues who want to use them with their students.

2. Expansion of the definition of face-to-face teaching to include labs, networks, libraries, learning centers, and so forth, because much of the teaching and learning in community colleges, especially with multimedia materials, occurs outside traditional classrooms. The key factor should be that the materials are in support of instruction, not where or how they are used.

3. Establishment of a clearinghouse for getting permission and paying royalties to use parts of others' work in their own multimedia instructional materials.

Multimedia development and such new technologies as scanners and digitizers are not covered in any of the copyright materials, the guidelines, or the law.

Our faculty members are very frustrated because they do not have a clear or easy way to get permission or pay royalties to use nonprint materials. They are driven by their desire to help students learn, and developing multimedia instructional materials is one very important and successful method at the community college level for improving the teaching and learning process. Thus our teachers feel that they have only two viable options: violating the letter of the law or not using the materials. In both cases, the creator of the original material is injured. Establishing guidelines for fair use, a process for getting permission, and a clearinghouse will help the creator, the teacher developing materials, and, most important, the students.

Much confusion and uncertainty about what faculty can and cannot do will be eliminated by establishing guidelines. We have heard conflicting opinions from attorneys who specialize in copyright and educational institutions. For example, during a recent teleconference, three attorneys said that the Kastenmeier guidelines for off-air taping were more restrictive than the actual Copyright Law and did not need to be followed by faculty members. Publishers and producers tell us unofficially that we can use parts of their materials in our multimedia modules because we are an educational institution, but they will not give us written permission.

Faculty members are willing to follow guidelines and get permission to use others' work if a process is established. Getting permission to use parts of print materials through a clearinghouse, through our campus bookstore, and through specialized publishers has greatly changed the way our teachers view copyright. No longer do they see it as an impediment to their teaching. Our teaching professionals are looking for a similar process or clearinghouse that will enable them to develop multimedia materials in accordance with the Copyright Law.

MCCCD Intellectual Rights Committee

Three years ago, MCCCD established a committee to look at intellectual rights, in terms of both how we are using and developing instructional materials and how our faculty developers can protect their own materials. The committee consisted of our legal counsel, an instructional administrator, and faculty developers. The MCCCD Governing Board had passed a policy requiring employees to adhere to the Copyright Law. However, no guidelines or training had been developed to help employees understand their rights and responsibilities under the law.

Establishing guidelines for fair use, a process for getting permission, and a clearinghouse will help the creator, the teacher developing materials, and, most important, the students.

The Intellectual Rights Committee reviewed a number of materials on copyright, both print and video, to find information we could give faculty and staff. We were concerned because the materials were negative in approach and tone, emphasizing what could not be done. We wanted to be positive so that faculty would be willing to comply with the Copyright Law. We also were frustrated because the materials dealt with print and video, but had little or no information or guidelines for the newer technologies, such as multimedia and distance learning.

As a result of our decision to take the positive approach about the rights faculty had under the Copyright Law, we had to develop our own videotape. The emphasis was on what could be done legally under the law and how to get permission to use copyrighted work. The videotape covers print, off-air broadcasts, and computer software. The narrator is a member of the faculty talking to other members about successes in legally using copyrighted materials. Every college in the district has a copy of the videotape and supporting materials. We also put guidelines, information about getting permission, and MCCCD copyright policies on a computer file server that could be accessed by anyone in MCCCD.

At the same time that we were creating the videotape, significant changes were taking place in the area of print materials. Our college bookstore company, Follett, was offering to put together anthologies of articles for faculty, including the service of getting permission from copyright owners. The bookstore then would sell the anthologies to students. Several book publishers were willing to offer a similar service to faculty. No longer do faculty members have to make their own copies of articles, essays, short stories, and so forth—often without permission. Getting permission also is becoming easier for print materials. Many publishers have departments and procedures set up to handle requests and are more willing to grant permission. A similar change in ease of getting permission or paying royalties has occurred with using videos in the library and on videoconferencing networks.

Multimedia development and such new technologies as scanners and digitizers, however, are not covered in any of the copyright materials, the guidelines, or the law. We surveyed members of our faculty about their concerns as developers, and we consistently heard pleas for guidelines, a procedure for requesting permission and paying royalties that would be successful, and a clearinghouse for handling requests, much like what is available for print materials. The Intellectual Rights Committee invited Ivan Bender to work with us and our faculty for two days this spring to provide more information about copyright and multimedia development as well as to identify gray areas. We also wanted to demonstrate what we are doing at the community college level and how our teaching methods, facilities, and student needs may differ from those at a four-year university. Bringing the community college experiences and concerns to this task force should strengthen the results. •

Kevin J. Howat is director of strategic relations and marketing programs at Macromedia, the leading independent software company supplying products and services to multimedia developers, publishers, and enthusiasts. Howat directs Macromedia's business development efforts, establishing and managing strategic alliances. He also heads the company's new Multimedia Source & Center programs group, which provides professional services and support to Macromedia's customers and industry partners. Before entering the computer industry, Howat spent thirteen years in publishing with Wadsworth and Addison-Wesley in a variety of positions, including sales, acquisitions, and editorial management. While there, he acquired rights to over 75 new properties, establishing many best-selling titles in key markets. His first foray into the software business was with The Learning Company, where he designed and managed the development of educational software products for children, including "OutNumbered!" the 1990 recipient of the Software Publishers Association's Elementary Education Award. Howat holds a bachelor's degree from Franklin and Marshall College, where he graduated cum laude with honors in literature.

New Media Centers Program: Forum for Research and Development of Multimedia Technologies in Education

By Kevin J. Howat

Headquartered in San Francisco, New Media Centers (NMC) is a not-for-profit organization that helps create model learning centers in institutions of higher education worldwide. The program helps educators better understand, utilize, and integrate digital technology into their classrooms and surrounding communities.

New media offer educators innumerable opportunities for exploration and innovation; they also pose many challenges. New Media Centers helps educators meet those challenges by acting as a clearinghouse for faculty and students to exchange ideas and know-how with industry experts on topics ranging from optimal system configurations to curriculum development. The program also coordinates collaborative projects between centers and a broad range of interested parties, including technology industry leaders, publishers, creative professionals, multimedia developers, legal experts, legislators, government regulators, and nongovernmental organizations. Through outreach programs, centers provide training and workshops on new media for such community members as K–12 teachers and local business executives. To ensure that each center is equipped with state-of-the-art tools and equipment, the program's technology members offer the centers advantageous pricing on complete hardware and software configurations for professional-quality new-media development. The goal of the program is to create 100 New Media Centers worldwide by 1996.

New Media Centers' broad-based constituency forms the foremost body of expertise on ground-breaking technical, developmental, social, and ethical issues surrounding new media today. As the world continues its transition from a manufacturing-based to an information-based economy, the program will play an increasingly critical role in developing innovative ways that digital technology can create new educational and economic opportunities.

Background

In early 1993, a group of technology companies formed a consortium to explore new ways of fostering use of interactive media in education. The goal was to find approaches that could prosper even in times of economic uncertainty, maintain currency in the face of rapid technological change, and extend the benefits of interactive media to a far broader audience.

The result was the formation of the New Media Centers program. Based on a long-term partnership among a group of key industry players and a diverse group of colleges

and universities, this program is dedicated to providing access to state-of-the-art new-media technologies not only to faculty, staff, and students at the host institutions but also to the business, creative, and educational communities they serve. The founding companies include Adobe Systems Incorporated, Apple Computer, Inc., FWB Inc., Macromedia, Prentice-Hall, Sony, and SuperMac Technology, Inc. Since inception, Kodak and Clement Mok Designs have joined the program as corporate sponsors.

A request for proposals for the program was announced at the 1993 EDUCOM conference in Cincinnati. Executives from the sponsoring companies addressed an audience of over 200 representatives from the press and academic communities. They were joined by Senator J. Robert Kerrey of Nebraska, sponsor of the Electronic Libraries Act of 1993, the goals of which are synergistic with those of the New Media Centers program.

Clearly the program tapped into a strong vein of interest on campuses across the continent. The New Media Centers office received over 700 requests for the request for proposals package. Over 140 institutions submitted detailed proposals that included major financial and other resource commitments for the 15 sites planned for the first year of the program. Based on this overwhelming response, the consortium's board expanded the number of sites to be created in the first year of the program to 22.

The schools selected to host the initial set of New Media Centers include Stanford University, California Polytechnic at Pomona, California State University at Long Beach, Georgia Institute of Technology, University of Hawaii at Manoa, Lewis-Clark State College, University of Michigan, University of Minnesota, University of Nebraska, Princeton University, University of New Mexico, Cornell University, Hostos Community College of the City University of New York system, New York University, Elizabeth City State University, Ohio State University, Pennsylvania State University, Houston Community College, Bennington College, Virginia Tech, University of Wisconsin, and University of Calgary.

Students can gain new insights into their academic studies from new-media course materials. Through hands-on experience with professional tools, they can master skills that can be hard to acquire in traditional academic settings but that can be vital in the job market.

Partnerships Between Industry and Academe

The program is unique, requiring mutual commitments from both corporate and academic partners. The requirements for the corporate partners include

- guaranteeing extended, preferential pricing for an entire complementary range of media-related hardware and software, as well as for upgrades;
- establishing a close working relationship between industry and academic partners, including a two-way exchange of support, information, and resources;
- providing New Media Center sites access to the consortium's industry contacts, technology developments, and emerging new media solutions;
- involving the New Media Centers in the advance testing and use of prototype new media products;
- steering debate over practical ways to deal with intellectual property issues, distribution, and royalties in the context of new media;
- sharing expertise in the process of turning prototypes developed at New Media Centers into viable products for the academic or commercial marketplace;
- financing the introduction of the program; and
- communicating New Media Centers achievements to other academic institutions, to the technology and publishing communities, and to the business world.

For participating educational institutions, the requirements of the program include

- allocation of financial resources, a facility, and staffing to create, equip, and maintain the center;
- a commitment to train faculty and students, introduce interactive media into a range of academic disciplines, and develop media-based curriculum materials;
- opening New Media Centers to community access, via workshops and seminars on

using interactive media for alumni, business professionals, K–12 teachers, parents, and others; and

- showcasing new-media technologies developed by the corporate partners in the New Media Centers program.

Differences Between NMC and Existing Initiatives

Compared with the ad hoc undertakings that typify many of the first-generation multimedia ventures on campuses, the New Media Centers program represents an effective model for deploying new-media technologies in education. The New Media Centers initiative differs on several counts.

Intrigued by the educational benefits and economic potential of multimedia, many leading publishing houses have begun to extend the reach of their product lines by adding new-media enhancement to their textbooks.

1. Practical and stable economic model. Because they don't rely on donations, seed programs, or one-time grants, the New Media Centers are less subject to the vagaries of corporate largesse. Participating universities have financial responsibility for their New Media Centers. But in exchange, each center has a unique guarantee: deep, long-term preferential pricing from a group of companies that together offer complete solutions for interactive media technologies.

There are several benefits to this strategy for participating educational institutions. First, it provides the best possible pricing on the products that are essential for professional quality work in multimedia. Second, it greatly simplifies purchasing negotiations. Third, because the preferential pricing guarantee extends over time, universities can more readily afford to upgrade their media technology and keep their New Media Centers on the leading edge. As a result, universities can build a more complete base for interactive media computing (in contrast to the piecemeal assemblages of equipment and endless purchase-price negotiations) more economically and more conveniently than before.

Other aspects of the New Media Centers program hold promise as revenue producers for participating universities. Workshops and seminars for nonuniversity audiences could generate a return on the initial investment. And new-media-based curriculum materials, created by faculty and students and disseminated to other campuses or in the commercial marketplace, could produce a stream of royalties.

2. Powerful model for integrating interactive media into academia. While there are pockets of achievement, interactive media have not made sweeping inroads on most campuses. Few schools offer degree programs in multimedia applications, interactive telecommunications, and the like. Only a handful of academic disciplines use interactive media in teaching. Many faculty, staff members, and students are not aware of what they can do with interactive media. Many find that the facilities for using them are still relatively inaccessible or incomplete.

The underlying economics of the program plays an important role in making new media available to academic endeavor. The financial commitment by universities and the preferential pricing by vendors make inviting, well-equipped facilities practical for the first time.

The New Media Centers are inclusive in scope, another departure from many existing multimedia projects. By charter, they serve the varied interests of the whole academic community, not just a few departments. Conceivably, professors and students of forensic anthropology, journalism, linguistics, business management, constitutional law, and other disciplines can all use the centers to learn new-media technologies and use them to enhance the curriculum for their own academic fields.

Each participating campus is free to interpret the overall training and support goals of the program in its own way. Some might focus on basic skills for working with interactive media: searching multimedia databases, combining different data types, and annotating them to compose something new—a new kind of term paper or scholarly article,

dynamic course materials, and the like. On a more conceptual level, some might explore issues in repurposing content from one medium to another, in terms of legal constraints or instructional design. Others might teach particular software packages or specific techniques for interactive presentations, graphic design, desktop publishing, or desktop video production.

For faculty, the New Media Centers program provides abundant resources for acquiring the skills of interactive media plus the collaborative assistance needed to integrate new media into their teaching. Students also benefit in several ways. They can gain new insights into their academic studies from new-media course materials. Through hands-on experience with professional tools, they can master skills beyond those associated with specific disciplines, skills that can be hard to acquire in traditional academic settings but that can be vital in the job market.

3. Effective model for extending the benefits of new media beyond the campus. The centers are an ideal resource not only for matriculated students, faculty, and staff but also for nonacademic "students"—from artists and business professionals to alumni and publishers. According to *Digital Media* (September 20, 1993), "The growing need for focused education in multimedia technologies transcends the university setting; professionals in the industry [need] a chance to brush up in a specific technology area or forge new relationships with others who share their interests." By leveraging their investment in new-media technology and the relationships they forge with industry partners in the NMC consortium, the New Media Centers are well positioned to serve the needs of this broad community.

Extension programs could offer workshops for business executives who want a basic introduction to the techniques of interactive multimedia for presentations or corporate training programs. They could also offer seminars on the impact of new media in publishing, telecommunications, or entertainment and hands-on classes on various multimedia tools. These activities not only could communicate the value of new media to a broader audience but also could generate an income that would help the New Media Centers be self-sustaining.

The New Media Centers can also serve to link participating universities and their media-based endeavors with the large, active community of developers who have been attracted to interactive media. This connection could prove useful to both universities and developers. For instance, developers may be helpful in suggesting creative ways of resolving technical challenges that the New Media Centers may encounter and offer their talents as teaching resources. In addition, the centers could host developers through artist-in-residence programs and provide venues for beta testing their prerelease software and hardware, which would provide the technology partners with a larger pool of solid, quality-assurance resources.

4. "Laboratory" for new approaches to creating and disseminating media-based publications. As print becomes just one of many media used to teach and learn, the textbook publishing industry is in the throes of change. Intrigued by the educational benefits and economic potential of multimedia, many leading publishing houses have begun to extend the reach of their product lines by adding new-media enhancement to their textbooks. Some have begun to distribute traditional textbooks electronically to campus bookstores for on-demand printing. Others offer custom publishing services to professors, creating tailor-made anthologies consisting of excerpts and graphical material selected from the texts they publish. Still others provide software tools with their texts so educators can create study aids and presentation materials that dovetail with assigned textbooks.

The New Media Centers offer a proving ground for even more fundamental changes. Program members—be they scholars, authors, editors, publishers, librarians,

distributors at campus bookstores or copy shops, software developers, or hardware vendors—have a congenial forum to develop and refine approaches to multimedia production, publication, and distribution. Consortium members hope a broad range of publishers will look to New Media Centers as laboratories where, together with educators, they can work to forge guidelines on such crucial matters as

- repurposing existing content for deployment in different media;
- pricing and distribution of new-media productions through new channels and developing new methods of tracking these transactions;
- extending copyright protection to electronically distributed multimedia; and
- marketing university-created new-media products.

As *Digital Media* observed, "It is only in understanding all the dimensions of distribution, production, and funding across all the industries touched by multimedia that we will move successfully into the new world...this technology will create." •

Reports of the Working Committees

During the National Conference on Educational Fair Access and the New Media, participants met in small sessions where working committees discussed possible guidelines governing three difficult copyright issues that particularly affect the handling of new electronic and digitized media: the quantity and sources of excerpted materials; the presentation, utilization, and duplication of copyrighted materials; and the retention, access, and storage of multimedia materials. On the final morning, participants met in general session to hear committee reports. A summary of each report follows.

Committee on the Quantity and Sources of Excerpted Materials

Report by Jan Sichel

The committee comprised sixteen participants. Five represented trade interests: the Association of American Publishers, the Picture Agency Council of America, a music company, the Goals of America and Artists' Rights Foundation, and the Global Village Schools Initiative. Five represented professional associations: the National Association of Secondary Schools, the Association for Supervision and Curriculum Development, the National Council of Teachers of Mathematics, the Association of American Colleges and Universities, and the Association of Educational Communication and Technology (AECT). Six were media directors and specialists representing various universities. The group lacked representatives of software publishers, the telecommunications industry, and students.

The committee first discussed abuses of copyrighted materials, particularly by students who seem to have the idea that anything in the commercial world is accessible to them to take and use as they choose. Clearer and more definitive guidelines might help librarians, media specialists, teachers, and administrators provide a better model of correct use. The members emphasized the ethical importance of having faculty members model respect for law, regulation, and fair use.

Participants pointed out that the international community is guilty of greater abuses against American copyright than are academics. Ignorance of fair-use criteria is probably a greater cause of abuse than real intent to flout regulations. In some cases, observance of fair use of copyrighted materials may conflict with freedom of speech.

The committee spent considerable time trying to define the term *multimedia*, finally arriving at the following working definition:

> *Multimedia is a work that combines audio, text, and/or visual materials by means of a computer or similar device.*

Members of the committee from the academic community differed with those from industry and professional organizations. Some agreed with AECT's recommendation to apply the current print guidelines' ten percent rule with the additional limitation that the resulting work may contain no more than ten percent of such excerpted audio and visual material. Others argued for a fifty percent rule in which fifty percent of a work could be made up of a combination of excerpts, as long as each excerpt was no more than ten percent of an original work.

Trade associations, particularly the Picture Agency Council of America, suggested the possibility of site licenses for still photographs in which universities could take responsibility for a licensing process.

A representative of the Association of American Publishers said the group might be willing to pursue pilot projects in developing materials.

Although the committee concluded in some frustration at being unable to reach any closure in the short time available, members felt that if they continued to work together, eventually it would be possible to write fair-use guidelines that would be acceptable to everyone. •

Jan Sichel is President of the Consortium of College and University Media Centers.

Committee on the Presentation, Utilization, and Duplication of Copyrighted Materials

Report by Lisa Livingston

The committee comprised several people from the educational community, media managers, instructional technology people, and computer people. Proprietary interests were also present. The committee decided that digitalization was the key to *multimedia,* defining the term as follows:

> *Multimedia is a medium or any combination of media that is or are driven, accessed, or manipulated by a computer.*

Members argued that while electronic technology is central to multimedia today, future means of communication are likely to be portable, and multimedia may move into nonelectronic technologies.

The committee discussed the issue of fair-use environments for the presentation of copyrighted multimedia materials. The members reviewed common learning environments that extend the concept of "face-to-face instruction." Self-paced learning programs, networks involving one or more academic institutions, and learning at home all create difficulties for fair-use regulation and possible threats to the profits of the proprietors.

Spontaneity is important in the student's navigation through a multimedia program, whether it's on a network or whether it is an individual unit. Spontaneity is also important for the student developing a digital term paper, for example, or doing a digital assignment at home.

The committee concurred that the definition of the term *learning environment* needed to be expanded.

In considering issues of utilization, the committee members again discussed self-education and home uses of materials. One issue is the distinction between education and entertainment. In a film class, for example, a teacher or student might have reasons to put together a multimedia presentation with clips of many films in them, but films are highly protected and producers demand that their profits be protected. The committee felt that there may be a significant difference between students developing a multimedia production that includes film clips and teachers doing the same thing. All agreed that if a faculty member developed some sort of media production and then tried to sell it, use rights had to be arranged. Many participants thought, however, that faculty members who spent a lot of time developing multimedia presentations for their own classes should be able to use film clips and that they should be able to incorporate some of these clips in their own term "papers" as well. It was suggested that it might be possible for limited-use rights to be acquired by an educational institution that would extend to such teacher and student uses.

Duplication is an issue closely related to utilization. Committee members debated the effects of having one media presentation used again and again for some kind of campus multimedia teaching program. Vendors were concerned about loss of profits, if duplication of such frequently used programs were permitted. It was suggested that some academic uses required multiple copies of materials. Vendors might find it profitable to make an arrangement with academic institutions to provide for these uses.

Lisa Livingston is Chairperson of the Copyright Task Force of the Consortium of College and University Media Centers.

The committee concluded its deliberations by discussing the rapidly changing marketplace and by emphasizing the importance of vendors and users working together to find a way of meeting their respective needs.

Further discussion dealt with the difficulty of obtaining copyright release, or of even tracking down the copyright holder. The concept of *intellectual value* as something separate from monetary value came up. There was debate about the need for a clearinghouse as a way to provide convenient access to copyrighted material but also to get players to work together.

One committee member suggested that there be something created called an *educational domain*, which is somewhere in between public domain and public performance. Another member suggested the need for a "school/home site license" for institutions where students may need to take multimedia materials home for study. •

Committee on the Retention, Access, and Storage of Multimedia Materials

Report by Carol A. Race

The committee comprised nine people, including three producers, two media directors, a few academics, and a representative of computer services. The committee adopted the definition of the term *multimedia* of the New Media Centers, which reads as follows:

> *Multimedia is a strategy for fostering interactive media through fusion of technologies and solutions for uniting text, illustrations, photographs, sound, voice, animations, and video in a dynamic new form.*

Members felt that interactivity was the key characteristic of multimedia.

Members first discussed the issue of retention. They agreed that short-term retention is covered by fair-use guidelines and that even long-term retention is usually permitted as long as it causes no economic loss to the copyright holder.

Participants pointed out the need to attach credits citing the copyright holder to all multimedia materials in such a way that they would be embedded in any fragments or parts of a work that were included in another work. It was suggested that evolving technologies may soon solve this problem.

As far as access is concerned, committee members agreed that the current fair-use guidelines cover most instances where access is desirable, as long as such access does not cause economic harm to the copyright holder. There was a need for an exemption to cover presentation of a product developed by a member of the faculty at conferences of education professionals.

Committee members representing higher education argued against an arbitrary numerical quantification of amounts of material excerpted from copyrighted materials or forming part of a teacher- or student-created work. Representatives from the K–12 teaching environment, however, argued that guidelines such as the "10/10 percent" upheld by the AECT were necessary.

Rosemary Talab, from AECT, called attention to a 1992 publication of the Office of Technology Assessment (OTA) called *Finding a Balance: Computer Software, Intellectual Property, and the Challenge of Technological Change.* (She was a reviewer and had contributed to a section that dealt with mixed media.) She called for a new OTA report on the issues discussed at the present conference and said there is particularly a need for investigation and report on digitized media.

Conference chairperson, Ivan Bender, announced that the sponsors of the conference intend to present the recommendations of the conference participants to such primary government agencies as the Patent and Trademark Office and the Copyright Office. •

Carol A. Race is a member of the Copyright Task Force of the Consortium of College and University Media Centers.

Ivan R. Bender is an attorney in private practice in Chicago who specializes in copyright law and the issues dealing with the educational and library use of video, film, and computer software. He represents a wide range of clients, including many educational institutions for whom he has served as a consultant in the development of their copyright policies. In his capacity as general counsel to the Association for Information Media and Equipment (AIME), Bender has established the AIME Copyright Hotline for use by educators and librarians. He was general counsel to Encyclopaedia Britannica Educational Corporation for 15 years and was a special consultant to the register of copyrights of the U.S. Copyright Office in Washington, D.C. Bender was instrumental in establishing the committee that negotiated the Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes and served on that committee. Author of the script and user guide for the video "Copyright: What Every School, College, and Library Should Know," he is a frequent lecturer on copyright to regional, state, and national educational organizations and is the author of many articles on the subject.

General Discussion

JUNE 17, 1994

IVAN R. BENDER, CHAIRPERSON

Chairperson Bender began the discussion by commending conference participants on the presentations and committee work done the previous day. He thanked the committee chairpersons for their reports and recognized the first speaker.

Children's Use of Software and Multimedia at Home

Ken Komoski, representing the Educational Products Information Exchange and the Learning and Information Network for Community Telecomputing (LINCT), reinforced the need for having the Office of Technology Assessment (OTA) look into the issues discussed at the conference. He urged participants to talk to their members of Congress and to request a new report on the important issues raised at this conference and also suggested talking to Kathleen Fulton, who is the senior analyst at OTA.

As a representative of LINCT, Komoski explained that there needs to be a realization that media will not just be going to the homes of individual students on the school bus, but also on "the computer bus...going home on a community telecomputing network." There will soon be a need not just for a school-based site license, which participants have discussed, but for a "community-based site license with particular attention being paid to this as a way of getting to the growing numbers of electric access have-nots." He pointed out that many parents spend "$350 to $1,250 a year on software that their kids use for ten or more hours each week at home, but that poor kids and struggling middle-class kids get only an hour or two a week of computer use in schools."

Chairperson Bender asked whether fair-use guidelines would extend to the child who took a multimedia program home for his own use and then put it on the Internet where any subscribers could access it. Komoski responded that no one could answer that question, but it needed to be addressed, as the "floodgates" of potentially "42 million K–12 youngsters" with access to networks were on the verge of being opened. Bender commented that the prospect of such numbers is a quantum leap beyond the previously discussed ideas of broadening the face-to-face teaching restrictions on fair use.

Komoski agreed, clarifying his remarks by adding that he was thinking particularly of computer software with high instructional value. In lower-income families, children have access to such products for limited and scheduled hours at school. The children of higher-income families, who have bought such programs, have virtually unlimited opportunities to explore the software and learn from it. He reiterated his concern that society was increasingly divided between technological haves and have-nots, and there needed to be a concerted attempt to deal with the problem.

Academic Domain

Gregg Mathis of Carnegie Mellon University raised the issue of defining *academic domain.* He takes academic domain to be between fair-use situations and the public domain. He argued that products have an economic life span, during which creators are entitled to full economic benefits and fair-use restrictions should apply. After such a period, however, the concept of academic domain might come into play. In this period, the product might be made available for free use by the academic community.

Carol Risher, of the Association of American Publishers, responded that the marketplace already has such a sequence in place. She gave examples of earlier versions of several software programs that were sold for nominal prices to homes and schools when new, revised editions were released. She also pointed out that a similar "after-market" exists for computer hardware, as offices update their equipment and donate or sell the old hardware to schools. She protested, "Schools are seen in fact as the next market after the prime commercial area, and I don't think you have to impose on copyright proprietors and vendors and creators something that they are now doing anyway." She said she was "not wild about an educational domain."

Need for Fair-Use Guidelines

James Schmidt, university librarian at San Jose State University, argued that seeking new guidelines may not be necessary or advisable. Because guidelines do not have the force of law, they are subject to litigation whenever some party or interest feels that its needs are not accommodated. As a result, guidelines are likely to be continuously evolving though case-by-case accretion.

Schmidt spoke of a case under adjudication involving the uploading of copyrighted material to a computer network bulletin board service. He did not know whether fair use claims formed any part of the defense, but he pointed out that one of the things computers "do very well is to count things and keep track of where they come from." Anonymity is very difficult.

Chairperson Bender then made four points:

1. The prevailing viewpoint of conference participants is that most educators, those at the K–12 level as well as those in higher education, would prefer more specific guidelines to help them define and interpret fair use.

2. The problem with any guidelines covering new media is that they can quickly become outmoded.

3. The preamble to the existing fair-use guidelines, which appear as Section 107 of the U.S. Copyright Law, "reflect the viewpoint that the guidelines are not necessarily carved in granite, so to speak, and can be looked at again by the parties."

4. Some educational organizations regard fair-use guidelines as a "safe harbor." As long as they stay within the confines of the guidelines they are secure from concerns about copyright infringement. But even if they stray beyond them, they may not be sued because the guidelines "are minimum rather than maximum."

There will soon be a need for a community-based site license with particular attention being paid to this as a way of getting to the growing numbers of electric access have-nots.

—Ken Komoski

The Home "After-Market"

Ken Komoski, responding to Carol Risher's comments about the "after-market" of educational and home sales, said, "The educational market is being transformed by the home market right now. Sales of computer software, including CD-ROM and multimedia, to homes will far outstrip all sales to schools within the next two years. As we speak, they're going neck and neck. The home market for these products increased by 69 percent, I believe, last year, and probably will hit that or better again this year." He then reiterated his concern that these sales will go largely to higher-income families, further dividing the haves from the have-nots. That's why, he said, "Fair use to low-income kids and adults is very important, and that's why we need to have community telecomputing cooperatives paying a communitywide site license and working with schools to be able to get good software on their networks and into the homes, hands, heads of low-income families."

Komoski further spoke of the BET Program—Businesses for Equity in Telecomputing—that encourages agencies that are considering giving computers to schools also to make them available to families. The families would sign up for training at community centers and earn a computer as they learned to use it. He mentioned the Buddy Program in Indiana, which also works to get computers into homes.

An academic domain could be between fair-use situations and the public domain, where a product might be made available for free use by the academic community.

—Gregg Mathis

Needs of the Disabled

Cindy King of Gallaudet University spoke on behalf of the needs of disabled populations. She said that current copyright law leaves unclear whether she has the right to transcribe audio tracks into texts that are accessible to deaf populations. Blind users could make use of texts converted to speech, but no one knows whether the conversion is permitted under copyright law. Most multimedia developers have a written text. Ideally this text, digitized, should be available to the disabled population for conversion into accessible forms, but the accessibility becomes a problem because everybody else would want it. In

England there have been experiments with making text fields available to blind populations for conversion to speech in ways that ensure that publishers do not lose their rights and that copying does not become universal.

Marketplace Needs Conveyed Through Permissions Requests

Carol Race, from Northeast Missouri State University, also representing CCUMC, observed that the process of requesting permissions from publishers and copyright holders is a form of communication between these groups and the marketplace. As a result of this communication, publishers are learning of new needs and problems of their buyers and are led to begin wrestling with some of the emerging problems, such as using materials on distance learning networks.

Producers' Perspective

Charles Benton of Public Media Inc. challenged remarks in Fred Hofstetter's presentation about the Howard Community College Faculty Copyright Manual. The frequency-of-use proviso, requiring that off-air taped material can be repeated once for teaching reinforcement and then, after 45 days, must be erased, is constantly being violated, resulting in "the erosion of public performance rights that we've seen." According to Benton, repeated showings of broadcasts in classes deprives program-rights holders of profits and cuts severely into the after-market. "The fact is if people were living up to this guideline there might still be a market here, and some of the companies that have gone out of business would not have gone out of business."

The prevailing viewpoint of conference participants is that most educators, those at the K–12 level as well as those in higher education, would prefer more specific guidelines to help them define and interpret fair use.

—Ivan Bender

Benton also spoke about the 10/10 rule relating to use of excerpts, arguing that sometimes a very brief amount of footage is "the essence of the film" and using such an excerpt is prohibited by fair use, even if it is less than ten percent of the original production and constitutes less than ten percent of the new production under development. As examples, he cited the footage showing the Tacoma Bridge collapse and a clip showing the metamorphosis of a butterfly from Encyclopedia Britannica films.

Benton supported the idea of having OTA issue a report on fair-use issues and suggested that Senator Kerrey, who sponsored the Electronic Education Act, might request such a study. With the National Information Infrastructure Task Force sponsoring a conference in 1994, progress will be made, probably incrementally, case by case. He said it may be premature to search for new guidelines right now, but it would be good if the conference established an ongoing steering committee to continue to work on the issues raised.

The most constructive thing to do right now, according to Benton, is to "focus on setting up models." He said, "CCUMC could apply research on where things are working and where you do have a public/private sector cooperation that is making progress and that is helping to make definitions. Let's attack this problem inductively from the ground up as opposed to deductively, from the guidelines down."

Ivan Bender, conference chairperson, responded that in his experience in visiting campuses and discussing fair use, most people are very eager to know just what they can and cannot do. The actions of the Maricopa County Community School District, where volunteers give their time to an intellectual property rights committee to police copyright at their own campuses, are exemplary, and Professor Hofstetter's views may be those of a small minority only. Bender doubted that many of the participants thought that the time was premature for new guidelines, but he commended the idea of an ongoing committee to work on guidelines.

Mike Wood, director of the Media Resources Center at Wichita State University, engaged Benton in further discussion regarding the Tacoma Bridge footage example as demonstrated by Fred Hofstetter. Wood asked about the conditions under which he

would be permitted to use the bridge footage and an Ella Fitzgerald Memorex clip in the classroom. Assume that he had purchased both pieces and had shown them both, in their entirety, to his physics class; and assume, to make a point, that he wished to juxtapose two short segments. Could he use capture-and-edit technology to "clip" the two pieces, or must he show them on two projectors, side by side? What intellectual or economic damage would be done to the filmmaker or the distributor in this instance? Carol Race and Carol Risher explained that the clips that Wood had acquired were on a commercial videodisc and later issued on a CD-ROM created by John Wiley and Sons. Benton replied, "Whoever is the copyright owner of those two clips ought to have a say in how they are used to get a fair return on those investments."

At a later point in the discussion, Race returned to this question, saying that when the clips are on a laserdisc using CAV technology, which is marketed for its random-access capability, "If they didn't want clips to be able to be used independently, they wouldn't put them down in a CAV random-access disk. That's what they're there for and that's what they encourage educators to do."

Bender added, "Those are very valuable clips and very valuable property. They shouldn't just be repurposed because they meet needs that are not foreseen by the publisher without some permission and without some relationship between the publisher and the user."

Blind users could make use of texts converted to speech, but no one knows whether the conversion is permitted under copyright law.
—Cindy King

Fair Use of Film Clips in Media Studies

Charles Benton said that he had recently had several discussions about the use of film clips of Hollywood movies for film studies. "I have actually been trying for decades to beat some sense into the heads of the Hollywood studios to allow access to clips for film studies for 'media literacy,' which we really need, and, unfortunately, the publishing community has been stymied because it's very difficult to get clearance for these clips from the Hollywood studios and/or commercial television just to study the media." He added, "Hollywood goes berserk with the idea" of picking up clips from feature films and defining the practice as fair use. He hoped that continuing pressure might bring about some progress on this issue. He argued, "We should be able to study the literature of our time—feature films—so that kids can develop some standards, some critical thinking, around films and television as they are with literature, which of course is traditional and entrenched."

The process of requesting permissions from publishers and copyright holders is a form of communication between these groups and the marketplace.
—Carol Race

An Existing OTA Report

James Schmidt announced that in 1986 or 1987, Representative Kastenmeier's subcommittee requested a study by OTA. A report was issued by the Library of Congress Network Advisory Committee under a title on the order of "Intellectual Property Rights in the Electronic Age." Robert Cost was the analyst. Although the Internet has expanded since the time the report was written, the participant said that Cost had been aware of the emerging network environment.

The same participant also identified himself as a person responsible for a media center operation with television distribution responsibilities. He said, "The current guidelines are an administrative headache, a nuisance, a piece of overhead that I wish we could do without, and if I can figure out a way to do that, I will."

Education and the Marketplace

Lynne Crandall, media consultant at the Language Resource Center of the University of Michigan, spoke as a representative of the International Association of Learning Laboratories. She pointed out that educational institutions have budgets targeted toward education and research. Because they cannot spare resources for defending lawsuits

involving copyright infringement, they tend to require their faculty members to be very conservative, inhibiting teaching, academic freedom, and creativity. In the end, she argued, the marketplace suffers; materials that could be purchased and used in the class are not bought because the faculty members are afraid to use them in the way that is most useful and, additionally, they are not creating things. They are not going to go out and pursue making a derivative work because the process looks too complicated.

She added that educators are urged to confront the educational crisis and prevent students from falling behind: "Well, then, let people teach them in the manner which is best suited to their teaching and learning styles by providing materials in the manner in which people want to use them." She argued that schools require that materials be licensable at very reasonable cost.

Crandall and Chairperson Bender discussed various educational "uses," specifically a case in which students are required to view a film as homework for a class in which it will be discussed. Crandall would like to see the classroom exemption extend to all instructional viewing (i.e., restricted to students enrolled in a course), regardless of whether the teachers is present or where the viewing takes place. Bender said that producers would view such a situation as an attempt to avoid the higher cost of performance fees compared to videotape copies. He said that under fair-use guidelines, home video rights are restricted to the classroom, but with public performance rights, the film could be shown anywhere. He further explained that when the 1976 Copyright Law was written, the home video industry was in its infancy. As a result, the law does not address the distinctions between two markets, the commercial market and the educational market.

Sometimes a very brief amount of footage is the essence of the film. Using such an excerpt is prohibited by fair use, even if it is less than ten percent of the original production and constitutes less than ten percent of the new production under development.

—Charles Benton

Frank Connolly of American University argued that it would be more productive to stop looking back at the traditions of educators and publishers and the way they affect copyright law, but instead look ahead to the future and think about the ideal world in 2006. "After we understand what the ideal will be in the future, let's back off and ask where are we now and how do we go from where we are to there."

As the discussion continued, Rosemary Talab of AECT pointed out that texts printed on paper are swiftly being replaced with digitized formats, including several refereed journals published on the Internet. There needs to be a hard look at the problems of networked uses of copyrighted materials. She quoted John Seeley Brown of Xerox, who said that "in the future, paper will be for transitory use." There are many unanswered questions with regard to large-scale uses of digitized works.

In addition, Talab said that portfolios and projects are increasingly a part of K–12 education. Students have to present their portfolios and their projects for review. Teachers in a growing number of school districts must submit portfolios for professional teaching evaluations. Many of these are likely to contain clips from video, compact discs, and other formats, creating yet more copyright and fair-use issues.

Appeal for Continuing Action

Chairperson Bender reiterated the need to look at issues that are likely to develop in the next five or ten years relating to multimedia and fair use. He said that these issues will need to be examined in a more relaxed way over some time. He appealed to participants to indicate their interest in pursuing the questions raised at the conference. He warned, however, that the government seems to be moving quickly, and it is necessary to make views known soon.

Streamlining Permissions Requests

Robert Kern of Paramount Publishing warned that during the transitional period technologies are evolving and new guidelines are being hammered out, and it will be

important to find ways to have complete copyright and permissions information travel with digital information and products.

Bender commended this idea, suggesting that if access to copyright holders by educational users was improved, a new fair-use definition might be less urgent. He said that all parties bear some blame for the current situation. The proprietary community is often slow in responding to requests for permissions and sometimes does not even know how to contact the copyright holder. The educational community, on the other hand, often goes about requesting permission in ways that make the process more difficult than it needs to be.

There is the possibility that the Copyright Office may try to implement some kind of prototype of a licensing mechanism. The problem is particularly complicated in the case of audiovisual products, which may involve many separate copyrighted materials so that producers need to negotiate music rights, directors' rights, rights of the author of the script, and performers' rights. There needs to be a way to make all of these rights negotiable at the same time.

The current guidelines are an administrative headache, a nuisance, a piece of overhead that I wish we could do without, and if I can figure out a way to do that, I will.

—James Schmidt

More on Academic Domain

Gregg Mathis from Carnegie Mellon made two points. First, he asked if any dollar value could be calculated for academic uses of materials under fair use; and, if so, could some kind of payment be made in return for release of materials to the academic domain? Second, he pointed out that proprietors would be able to decide whether or not to release materials into the academic domain.

Nongeographic Educational Environments

Jim Mecklenburger, a journalist and representative of Global Village Schools Institute, pointed out that the representation at the conference and the issues discussed were informed by traditional players and "well-entrenched enterprises—government, legal, schools operations, and publishers of many kinds of media." He said there is a need to bring in some interests who will be important players in the future. Among these are "the world of telephony" and video producers such as Turner Broadcasting, which has become "an enterprise that is increasingly becoming an educating institution, drawing some of its revenue and some of its activity and some of its talent into being a direct instructor, not merely to a group of folks in one place, which is largely the context of most of our conversation, but to groups of folks in many, many places." Because of enterprises like these, educational environments may come to be defined in ways that are not geographic at all. He mentioned the National Geographic Kids Network and described it as "a schooling community with no locus, but rather a community of folks tens of thousands large that are orchestrated technologically to do some work."

Mecklenburger said, "We need a very new set of rubrics, whether it's academic domain or some other kinds of ways to think about these matters that aren't tied to geography, aren't tied to classrooms, aren't tied to libraries and aren't tied to media centers, but have a much broader context." He also said that the people who are now pushing the limits of education, publishing, and distribution needed to be brought into the conversation.

Finally, Mecklenburger stated that OTA is currently working on a study called *Teachers and Technology*, which is due for release in January 1995. Kathleen Fulton would know about it.

Chairperson Bender responded that a number of participants who were invited did not come, but they would be sent a report of the conference. The sponsors had attempted to include all primary organizations.

Materials that could be purchased and used in the class are not bought because faculty members are afraid to use them in the way that is most useful and, additionally, they are not creating things.

—Lynne Crandall

Future Directions

Cynthia Rosso with the National Council of Teachers of Mathematics called for focus groups to look at where education, the publishing industry, and the communications industry is heading.

Chairperson Bender agreed, adding that it was becoming very likely that increasingly the academic community would become a major producer of multimedia programming, to the point that academic institutions might be suppliers of materials that would be disseminated by commercial vendors or distributed in competition with them. The development of university presses is a precedent for this process, as they were first formed to disseminate information that did not interest commercial publishers and then many of them became strong, more general publishers themselves. When academic institutions become producers and distributors, either commercially or nonprofit, an entirely new set of questions will arise.

Conclusion

Lisa Livingston, from City College of New York and a representative of CCUMC, offered parting words to participants representing proprietary interests. She said, "The technology that is being integrated and used in the classroom today might not need to be considered or should not need to be considered the way technology was used in the past. We are talking about technology changing the way we educate and changing the way kids learn. We're talking about linear and nonlinear integration, and we're talking about—for the first time maybe in our entire life—teaching the entire community. If we consider that as a reality, then that means that we all have a tremendous responsibility to try to work together to come up with some sort of solution so that we don't leave behind people that are disabled, people that do not have the money to purchase, and people that are making and working hard to create for us in education."

Ken Komoski extended Livingston's remarks by referring to "the ecology of learning." He pointed out that children typically spend nineteen percent of their time over a year in school, and traditionally this time has dominated their learning experience. "But now that we've got this enormous activity going on in homes, it's increasing and forcing us to look more broadly at this ecology." He mentioned a commentary he had published in *Education Week* (January 25, 1994) called "The 81-Percent Solution to Educational Problems."

Texts printed on paper are swiftly being replaced with digitized formats, and there are many unanswered questions with regard to large-scale uses of digitized works.

—Rosemary Talab

Chairperson Bender then thanked the sponsors, the Consortium of College and University Media Centers and the Agency for Instructional Technology, as well as National Video Resources, which had underwritten some costs of the conference, and Dynacom, which had also contributed. He acknowledged the important contribution of the presenters and all the participants.

Bender then affirmed that the effort will continue, especially in working with government agencies. He hoped to pull together a "small core of individuals" to keep up the dialogue.

Charles Benton joined Ken Komoski in thanking Bender for his leadership role in the conference and expressed great satisfaction in having been able to attend.

Joann Stevens, from the Association of American Colleges and Universities, added that new media will provide a voice and images for "different kinds of people, cultures, and women who have not been fairly represented or accurately represented in our education within the past." She said that technology will make "what we learn more accurate and broader than it has been."

Bender expressed appreciation to American University for hosting the conference.

The Educational Fair Access and the New Media National Conference concluded at 11:30 a.m., June 17, 1994. •

Appendices

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Multimedia Project: *interMap*

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U.S. Copyright Law—Title 17 of the United States Code

Section 106. Exclusive Rights in Copyrighted Works
Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.

Section 106A. Rights of Certain Authors to Attribution and Integrity
(a) Rights of Attribution and Integrity—Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art—

(1) shall have the right—

(A) to claim authorship of that work, and

(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) subject to the limitations set forth in section 113(d), shall have the right—

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

(b) Scope and Exercise of Rights—Only the author of a work of visual art has the rights conferred by subsection (a) in that work, whether or not the author is the copyright owner. The authors of a joint work of visual art are co-owners of the rights conferred by subsection (a) in that work.

(c) Exceptions—

(1) The modification of a work of visual art which is a result of the passage of time or the inherent nature of the materials is not a distortion, mutilation, or other modification described in subsection (a)(3)(A).

(2) The modification of a work of visual art which is a result of conservation, or of the public presentation, including lighting and placement, of the work is not a destruction, distortion, mutilation, or other modification described in subsection (a)(3) unless the modification is caused by gross negligence.

(3) The rights described in paragraphs (1) and (2) of subsections (a) shall not apply to any reproduction, depiction, portrayal, or other use of a work in, upon, or in any connection with any item described in subparagraph (A) or (B) of the definition of "work of visual art" in section 101, and any such reproduction, depiction, portrayal, or other use of a work is not a destruction, distortion, mutilation, or other modification described in paragraph (3) of subsection (a).

(d) Duration of Right—

(1) With respect to works of visual art created on or after the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, the rights conferred by subsection (a) shall endure for a term consisting of the life of the author.

(2) With respect to works of visual art created before the effective date set forth in section 610(a) of the Visual Artists Rights Act of 1990, but title to which has not, as of such effective date, been transferred from the author, the rights conferred by subsection (a) shall be coextensive with and shall expire at the same time as, the rights conferred by section 106.

(3) In the case of a joint work prepared by two or more authors, the rights conferred by subsection (a) shall endure for a term consisting of the life of the last surviving author.

(4) All terms of the rights conferred by subsection (a) run to the end of the calendar year of the last surviving author.

(e) Transfer and Waiver—

(1) The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

(2) Ownership of the rights conferred by subsection (a) with respect to a work of visual art is distinct from ownership of any copy of that work or of a copyright or any exclusive right under a copyright in that work. Transfer of ownership of any copy of a work of visual art, or of a copyright or any exclusive right under a copyright, shall not constitute a waiver of the rights conferred by subsection (a). Except as may otherwise be agreed by the author in a written instrument signed by the author, a waiver of the rights conferred by subsection (a) with respect to a work of visual art shall not constitute a transfer of ownership of any copy of that work, or of ownership of a copyright or of any exclusive right under a copyright in that work.

Section 107. Limitations on Exclusive Rights: Fair Use
Notwithstanding the provisions of section 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies of phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

Section 110. Limitations on Exclusive Rights: Exemption of Certain Performances and Displays
Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if

(A) the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution; and

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission; and

(C) the transmission is made primarily for

(i) the reception in classrooms or similar places normally devoted to instruction, or

(ii) reception by persons to whom the transmission is directed because their disabilities or other special circumstances prevent their attendance in classrooms or similar places devoted to instruction, or

(iii) reception by officers or employees of governmental bodies as a part of their official duties or employment;

(3) performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if

(A) there is no direct or indirect admission charge, or

(B) the proceeds, after deducting the reasonable costs of

producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of obligation to the performance under the following conditions:

(i) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation;

(5) communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless

(A) a direct charge is made to see or hear the transmission; or

(B) the transmission thus received is further transmitted to the public;

(6) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;

(7) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.295 and 73.593-78.595); or (iv) a cable system (as defined in section 111 [f]);

(9) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8-iii), provided that the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization.

(10) Notwithstanding paragraph 4 above, the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations, if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose.

Fair-Use Guidelines for Books and Periodicals

In a joint letter to Chairman Kastenmeier, dated March 19, 1976, the representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, and of the Authors League of America, Inc., and the Association of American Publishers, Inc., stated:

You may remember that in our letter of March 8, 1976, we told you that the negotiating teams representing authors and publishers and the Ad Hoc Group had reached tentative agreement on guidelines to insert in the Committee Report covering educational copying from books and periodicals under Section 107 of H.R. 2223 and S. 22, and that as part of that tentative agreement each side would accept the amendments to sections 107 and 504 which were adopted by your Subcommittee on March 3, 1976.

We are now happy to tell you that the agreement has been approved by the principals and we enclose a copy herewith. We had originally intended to translate the agreement into language suitable for inclusion in the legislative report dealing with section 107, but we have since been advised by committee staff that this will not be necessary. As stated above, the agreement refers only to copying from books and periodicals, and it is not intended to apply to musical or audiovisual works.

The full text of the agreement is as follows:

Agreement on Guidelines for Classroom Copying in Not-for-profit Educational Institutions with Respect to Books and Periodicals

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future; and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

Guidelines

I. Single Copying for Teachers

A single copy may be made of any of the following by or for a teacher at his or her individual request for his or her scholarly research or use in teaching or preparation to teach a class:

A. a chapter from a book;

B. an article for a periodical or newspaper;

C. a short story, short essay or short poem, whether or not from a collective work;

D. a chart, graph, diagram, drawing, cartoon or picture from a book, periodical, or newspaper.

II. Multiple Copies for Classroom Use

Multiple copies (not to exceed in any event more than one copy per pupil in a course) may be made by or for the teacher giving the course for classroom use or discussion; provided that:

A. the copying meets the tests of brevity and spontaneity as defined below; and,

B. meets the cumulative effect test as defined below; and,

C. Each copy includes a notice of copyright.

Definitions

Brevity

(i) Poetry:

(a) a complete poem if less than 250 words and if printed on not more than two pages or,

(b) from a longer poem, an excerpt of not more than 250 words.

(ii) Prose:

(a) either a complete article, story, or essay of less than 2,500 words, or

(b) an excerpt from any prose work of not more than 1,000 words or ten percent of the work, whichever is less, but in any event a minimum of 500 words.

[Each of the numerical limits stated in "i" and "ii" above may be

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expanded to permit the completion of an unfinished line of a poem or of an unfinished prose paragraph.]

(iii) Illustration:

One chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

(iv) "Special" works:

Certain works in poetry, prose or in "poetic prose" which often combine language with illustrations and which are intended sometimes for children and at other times for a more general audience, fall short of 2,500 words in their entirety. Paragraph ii above notwithstanding such "special works" may not be reproduced in their entirety; however, an excerpt comprising not more than two of the published pages of such special work and containing not more than ten percent of the words found in the text thereof, may be reproduced.

Spontaneity

(i) The copying is at the instance and inspiration of the individual teacher, and

(ii) The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are so close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative Effect

(i) The copying of the material is for only one course in the school in which the copies are made.

(ii) Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

(iii) There shall not be more than nine instances of such multiple copying for one course during one class term.

[The limitations stated in ii and iii above shall not apply to current news periodicals and newspapers and current news sections of other periodicals.]

Prohibitions to I and II above

Notwithstanding any of the above, the following shall be prohibited:

A. Copying shall not be used to create or to replace or substitute for anthologies, compilations or collective works. Such replacement or substitution may occur whether copies of various works or excerpts therefrom are accumulated or reproduced and used separately.

B. There shall be no copying of or from works intended to be "consumable" in the course of study or of teaching. These include workbooks, exercises, standardized tests, and test booklets and answer sheets, and like consumable materials.

C. Copying shall not:

(a) substitute for the purchase of books, publishers' reprints, or periodicals;

(b) be directed by higher authority;

(c) be repeated with respect to the same item by the same teacher from term to term.

D. No charge shall be made to the student beyond the actual cost of the photocopying.

Agreed March 19, 1976

Ad Hoc Committee on Copyright Law Revision: by Sheldon Elliott Steinbech

Author-Publisher Group: Authors League of America: by Irwin Karp, Counsel

Association of American Publishers, Inc.: by Alexander C. Hoffman, Chairman, Copyright Committee

Fair-Use Guidelines for Music

In a joint letter dated April 30, 1976, representatives of the Music Publishers' Association of the United States, Inc., the National Music Publishers' Association, Inc., the Music Teachers National Association, the Music Educators National Conference, the National Association of Schools of Music, and the Ad Hoc Committee on Copyright Law Revision, wrote to Chairman Kastenmeier as follows:

During the hearings on H.R. 2223 in June 1975, you and several of your subcommittee members suggested that concerned groups should work together in developing guidelines which would be helpful to clarify Section 107 of the bill.

Representatives of music educators and music publishers delayed their meetings until guidelines had been developed relative to books and periodicals. Shortly after that work was completed and those guidelines were forwarded to your subcommittee, representatives of the undersigned music organizations met together with representatives of the Ad Hoc Committee on Copyright Law Revision to draft guidelines relative to music.

We are very pleased to inform you that the discussions thus have been fruitful on the guidelines which have been developed. Since private music teachers are an important factor in music education, due consideration has been given to the concerns of that group.

We trust that this will be helpful in the report on the bill to clarify Fair Use as it applies to music.

The text of the guidelines accompanying this letter is as follows:

Guidelines for Educational Uses of Music

The purpose of the following guidelines is to state the minimum and not the maximum standards of educational fair use under Section 107 of H.R. 2223. The parties agree that the conditions determining the extent of permissible copying for educational purposes may change in the future; that certain types of copying permitted under these guidelines may not be permissible in the future, and conversely that in the future other types of copying not permitted under these guidelines may be permissible under revised guidelines.

Moreover, the following statement of guidelines is not intended to limit the types of copying permitted under the standards of fair use under judicial decision and which are stated in Section 107 of the Copyright Revision Bill. There may be instances in which copying which does not fall within the guidelines stated below may nonetheless be permitted under the criteria of fair use.

A. Permissible Uses

1. Emergency copying to replace purchased copies which for any reason are not available for an imminent performance provided purchased replacement copies shall be substituted in due course.

2. (a) For academic purposes other than performance, single or multiple copies of excerpts of works may be made, provided that the excerpts do not comprise a part of the whole which would constitute a performable unit such as a selection, movement or aria, but in no case more than ten percent of the whole work. The number of copies shall not exceed one copy per pupil.

(b) For academic purposes other than performance, a single copy of an entire performable unit (section, movement, aria, etc.) that is,

(1) confirmed by the copyright proprietor to be out of print or

(2) unavailable except in a larger work, may be made by or for a teacher solely for the purpose of his or her scholarly research or in preparation to teach a class.

3. Printed copies which have been purchased may be edited or simplified provided that the fundamental character of the work is not distorted or the lyrics, if any, altered or lyrics added if none exist.

4. A single copy of recordings of performances by students may be made for evaluation or rehearsal purposes and may be retained by the educational institution or individual teacher.

5. A single copy of a sound recording (such as a tape, disc, or cassette) of copyrighted music may be made from sound recordings owned by an educational institution or an individual teacher for the purpose of constructing aural exercises or examinations and may be retained by the educational institution or individual teacher. (This pertains to the copyright of the music itself and not to any copyright which may exist in the sound recording.)

B. Prohibitions

1. Copying to create or replace or substitute for anthologies, compilations or collective works.

2. Copying of or from works intended to be "consumable" in the course of study or of teaching such as workbooks, exercises, standardized tests and answer sheets, and like material.

3. Copying for the purpose of performance, except as in A-1 above.

4. Copying for the purpose of substituting for the purchase of music, except as in A-1 and A-2 above.

5. Copying without inclusion of the copyright notice which appears on the printed copy.

Fair-Use Guidelines for Off-Air Videotaping

In March of 1979, Congressman Robert Kastenmeier, chairman of the House Subcommittee on Courts, Civil Liberties, and Administration of Justice, appointed a Negotiating Committee consisting of representatives of educational organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention, and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes

1. The guidelines were developed to apply to off-air recording by nonprofit educational institutions.

2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a nonprofit educational institution for a period not to exceed the first forty-five (45) consecutive days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar retention period. "School days" are school session days not counting weekends, holidays, vacations, examination periods, and other scheduled interruptions within the forty-five (45) calendar day retention period.

4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provision governing the original recording.

6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

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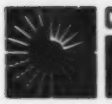

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